DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

H.R. 4169

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1982, AND FOR OTHER PURPOSES

PART 2—(Pages 1–1033)

Arms Control and Disarmament Agency
Board for International Broadcasting
Commission on Civil Rights
Commission on Security and Cooperation in Europe
Department of Commerce
Department of State
Equal Employment Opportunity Commission
Federal Communications Commission
Federal Maritime Commission
Federal Trade Commission
International Communication Agency
Legal Services Corporation
Nondepartmental Witnesses
Office of the U.S. Trade Representative
Securities and Exchange Commission
Small Business Administration
United Nations

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DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

WEDNESDAY, APRIL 1, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room S–146, the Capitol, Hon. Lowell P. Weicker, Jr. (chairman) presiding.

Present: Senator Weicker.

DEPARTMENT OF COMMERCE

ECONOMIC AND STATISTICAL ANALYSIS

STATEMENT OF WILLIAM A. COX, ACTING CHIEF ECONOMIST

ACCOMPANIED BY:

- GEORGE JASZI, DIRECTOR, BUREAU OF ECONOMIC ANALYSIS
- ALLAN H. YOUNG, DEPUTY DIRECTOR, BUREAU OF ECONOMIC ANALYSIS
- PHILIP TUCKER, CHIEF PLANNING AND EVALUATION OFFICER
- BEATRICE N. VACCARA, DIRECTOR, BUREAU OF INDUSTRIAL ECONOMICS
- JOSEPH R. DUNCAN, DIRECTOR, OFFICE OF FEDERAL STATISTICAL POLICY AND STANDARDS
- TOM COX, ACTING ADMINISTRATIVE OFFICER, BUREAU OF INDUSTRIAL ECONOMICS
- JOHN M. O'BRIEN, ADMINISTRATIVE OFFICER, BUREAU OF ECONOMIC ANALYSIS
- NANCY A. RICHARDS, DIRECTOR, OFFICE OF BUDGET

BUDGET REQUEST

Senator WEICKER. The subcommittee will come to order.

Gentlemen, we have a problem today. I am going to have to be on the floor to offer an amendment sometime in the next few minutes. So we will start and then we are going to have to recess until the amendment is dispensed with.

Our first request is that of the economic and statistical analysis. The amount requested is $25,560,000, which is the level of the 1982 base and provides for 617 permanent positions.

Appearing on behalf of this request is William Cox, Acting Chief Economist. Mr. Cox, we are pleased to have your statement with regard to the request.

OPENING STATEMENT

Mr. Cox. Thank you, Mr. Chairman. I am pleased to appear before you today to present the 1982 budget request for economic and statistical analysis. This request is to cover the budgets of the Bureau of Economic Analysis, the Bureau of Industrial Economics, and the Office of Economic Affairs. No longer included in this appropriation is the Office of Federal Statistical Policy and Standards which is being transferred to the Office of Management and Budget, effective April 1, 1981. The Bureau of Economic Analysis is responsible for compiling the national income and product accounts—GNP estimates—and the international economic accounts, among other tasks. The Bureau of Industrial Economics, established in early 1980, monitors and analyzes the performance of individual industries. It serves as an objective source of the industrial data, analysis, and research needed for business planning and decisionmaking, for the operation of Federal programs, and the development of Federal policies. The Office of Economic Affairs comprises the professional and administrative staff of the Department's chief economist.

I am accompanied by George Jaszi, Director of the Bureau of Economic Analysis, Beatrice N. Vaccara, Director of the Bureau of Industrial Economics, Joseph Duncan, Director of the Office of Federal Statistical Policy and Standards, and other ESA officials.

The total amount requested for the economic and statistical analysis program is $25,560,000, of which $17,426,000 is for the Bureau of Economic Analysis; $7,406,000 is for the Bureau of Industrial Economics; and $728,000 is for the Office of Economic Affairs. The fiscal year 1982 request represents a net increase of $960,000 over the currently available fiscal year 1981 budget of $24,600,000. The net increase is comprised of $1,851,000, less decreases for absorptions and transfers in the amount of $891,000.

In terms of positions, the request is for 617 authorized permanent full-time positions, a decrease of 16 from the fiscal year 1981 level. Of this decrease, 6 are the result of the transfers. The remaining 10 are the result of cost absorptions that have left these positions unfunded.

TRANSFERS

First, I should like to describe the five transfers included in this budget request. In the first two, ESA is transferring the funds; in the last three, ESA is receiving the funds. I should like to begin with the largest transfer.

The transfer of $1,235,000 and 25 positions to the Office of Management and Budget, Office of Information and Regulatory Affairs, complies with the Paperwork Reduction Act of 1980, Public Law 96–511. This provides for the establishment of the Statistical Policy Division within OMB.

I should say the transfer of the Office of Statistical Policy and Standards heretofore residing in the Commerce Department to OMB as provided in the Paperwork Reduction Act. We believe that this transfer will improve coordination and development of the Federal statistical program and also serve to minimize the public reporting burden.

The transfer of $126,000 and two positions to the salaries and expenses, general administration appropriation represents the transfer of the terrorism and urban business retention functions from the Bureau of Industrial Economics—BIE—to the Associate Deputy Secretary.

The transfer of $171,000 and 6 positions from the salaries and expenses, general administration appropriation to ESA is for the assignment of the program coordination and administrative functions of the chief economist to the Office of Economic Affairs—OEA. This transfer provides for the accurate accounting of OEA and general administration costs.

The transfer of $76,000 from the salaries and expenses, general administration appropriation to ESA is for the ESA's share of Senior Executive Service bonus funds. This is part of a Department-wide transfer to provide for a more accurate accounting of personnel compensation costs for the units of the Department.

The transfer of $548,000 and 15 positions from operations and administration, International Trade Administration to ESA concludes the transfer of resources approved by this subcommittee in the fiscal year 1981 budget for the establishment of the Bureau of Industrial Economics. This transfer covers the business policy analysis and administrative support functions that were negotiated after the submission of last year's budget request.

ABSORPTIONS AND REDUCTIONS

This budget request reflects absorptions for fiscal year 1982 of $870,000, comprised of: (1) $559,000 for the October 1980 pay increase, (2) $215,000 for personnel compensation and benefits, (3) $37,000 for travel, and (4) $59,000 for equipment. The last three items represent reductions by the current administration.

In addition to these absorptions, resources for new work in the amount of $2,192,000 and 55 positions have been dropped from the earlier January 19, congressional budget request. The new work was dropped because it was of a lower priority than existing base programs. Five new projects were proposed: (1) improvements in the plant and equipment survey, $604,000 and 15 positions; (2) current surveys of direct investment by American firms abroad and foreign investors in the United States, $386,000 and 10 positions; (3) improved measures of personal income—revised estimates of intercounty commuting, $244,000 and 5 positions; (4) improved data and analysis of the service industries, $265,000 and 7 positions; and (5) future industrial prospects, $693,000 and 18 positions.

This concludes my prepared statement. I shall try to answer any questions that you or members of your committee may have.

MEASURES OF NATIONAL WELL-BEING

Senator WEICKER. You are currently conducting research on the development of the concepts, statistical methodology, and measures relevant for evaluating change in the national well-being.

What exactly do you mean by national well-being?

Mr. COX. I think this refers to the project initiated several years ago to evaluate the nonmarket and environmental aspects of the national well-being. As you know, the rather expensive efforts to control pollution and create a more attractive environment are not fully encompassed within the national income accounts as traditionally put together.

Furthermore, there are other aspects of nonmarket activities, including work conducted at home and various other kinds of unpaid work that are not encompassed within these accounts. They have become rather important aspects of the national well-being, and this project was initiated in an effort to get a better quantitative measure of their significance.

PUBLICATIONS

Senator WEICKER. Your office has a wide variety of publications. How many periodicals does your office publish, at what costs, and to what extent are those costs covered by subscriptions and fees?

Mr. COX. That is a question that would involve a bit of thought. We do publish a number of prominent publications. The publication with the largest circulation is the Survey of Current Business published by the Bureau of Economic Analysis. It does carry a subscription fee. If we want to get into the details of the extent to which the fees cover the publication costs, I think I would turn to Mr. O'Brien.

Senator WEICKER. Are these matters you want to submit for the record?

Mr. O'BRIEN. Please, Mr. Chairman. It is very detailed. We don't keep the fees for the publications. But we would like to submit the details for the record.

[The information follows:]

The Bureau of Economic Analysis (BEA) and Bureau of Industrial Economics (BIE) publish nine periodicals at a fiscal year 1980 cost of $557,493. Each periodical and its cost are listed below:

Periodical:	Cost
Survey of Current Business (BEA)	$344,168
Weekly Business Statistics (BEA)	9,543
Business Conditions Digest (BEA)	36,827
Subtotal, BEA	390,538
U.S. Industrial Outlook (BIE)	97,155
Business Conditions Report (BIE)	7,200
Construction Review (BIE)	48,000
Copper Quarterly (BIE)	4,000
Printing and Publishing Quarterly (BIE)	4,600
Forest Products Review (BIE)	6,000
Subtotal, BIE	166,955
Total, ESA	557,493

ESA does not receive any revenue from the sale of its publications; these accrue only to the Government Printing Office (GPO). The basic set-up costs are paid for by ESA, and a number of copies are made available for reports distribution under our control. GPO then continues the press run to a total the Superintendent of Documents thinks can be sold. The additional copies involve further costs for paper, printing, binding, mailing, and distribution overhead. It is on the basis of these costs that the price to the buyer is established by the Superintendent of Documents. Under authority of Public Law 90-620, GPO offers Government publications for sale to the public at its costs determined by the Public Printer, plus 50 percent.

BUREAU OF INDUSTRIAL ECONOMICS

Senator WEICKER. In other words, the number of periodicals, the cost of the periodicals and what is charged was recaptured in terms of subscription fees?

Mr. O'BRIEN. We pay for the developmental costs for all the publications. The GPO continues a press run to the point to which they think they can sell, but we do not recoup any of the revenues from these sales.

Senator WEICKER. The Bureau of Industrial Economics has as one of its primary goals to serve as a source of industrial data, analysis, and research for business planning. We hear much about getting the Federal Government out of areas that the private sector could handle. Basic information on industrial economics would appear to be one of the areas that the private sector could handle quite well.

What specific functions does the Bureau of Industrial Economics perform that the private sector could not do just as well?

Mr. COX. I think most of the efforts of this bureau are oriented toward analyzing problems of more or less immediate concern to Government policymakers. We also compile data and do a certain amount of background analysis on a current basis, on a wide array of industries. Some of this material is published in the large volume which you probably have seen called the U.S. Industrial Outlook which is published annually. We also publish a construction review and a number of other such specialized publications. We think that these serve the interest of policymakers.

If they also are of use and interest, as I think many of them are to people in the private sector, they pay for these publications.

ECONOMIC POLICY

Senator WEICKER. We have a great number of economic advisors to the administration. Where do you fit into all of this? How is that coordinated? I don't understand why we have 627 people, I guess that is what the personnel figure would be for the estimate in 1982. At $25 million there seems to be no dearth of economic advice from those around the administration. Who are you serving? Do you serve the President, the Secretary of Commerce or private enterprise? Who is the beneficiary of all of this work?

Mr. COX. Senator Weicker, I think the bulk of these people are in the Bureau of Economic Analysis. Four hundred and forty-nine was requested for 1982 and that will provide a good example of the kind of work we do. As you can see from the table here, about 249 of these work on the national economic accounts. Another, somewhat more than 100, work on the international economic accounts. They used to be called the balance of payments accounts. This is very detailed statistical work. These accounts are built up from myriads of components. These people are not engaged in advising the President or the Secretary of Commerce. They are engaged in preparing the fundamental documents that are used in the Government, the Council of Economic Advisers, and many private users in analyzing the well-being of the Nation in economic terms.

So I think one has to recognize that we have a lot of people working on many detailed aspects of the economy, including everything from shipments of capital equipment to auto sales, and personal income. Furthermore, we break down many of these items on a subnational basis, which is a very labor intensive proposition.

On the industrial side, we have about 150 people employed in our Bureau of Industrial Economics working on the industrial sector, largely heavy industry, but also on the consumer products and service industries. I think this is a minimal commitment of Government resources to maintaining current information and analysis on these markets and the industries that serve these markets.

After all, whether it is our intention to intervene or not in these industry sectors, we must consistently deal with the problems as we can see today with the auto sector and the steel sector. Those are two in which the Bureau does advise the Secretary of Commerce on a regular basis.

Senator WEICKER. It is not my idea that the private sector can handle everything. That is the guiding principle in many of the budget cuts by this administration. I have never consulted with you and I consider myself to have fairly good knowledge of the economics of this country and the world and I do so through private publications. I am just wondering why this is logical, that in order to fulfill the philosophical end of this administration, why this all can't be handled on the private side.

Mr. COX. I don't think you want the national economic accounts to be compiled by private industry. That is a function that I think is as much a Government function as national defense in a way.

Senator WEICKER. How many people are involved in that?

Mr. COX. About 250 in the 1982 request.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. All right, Mr. Cox. Thank you very much. I have other questions which we will submit for the record and have you respond to them.

Mr. COX. Thank you, Senator.

Senator WEICKER. Thank you.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WEICKER

ECONOMIC PICTURE

Mr. Cox, there are many economic spokesmen for the Administration - Mr. Regan at Treasury, Mr. Weidenbaum at the Council of Economic Advisers, Mr. Stockman at OMB, among others. You are what could be called the chief professional economist of the U.S. Government. Your unit is supposed to be "an objective source" of economic data.

What is your objective prognosis for the economy of the country?

Thank you for the compliment, Mr. Chairman. We strive to be an objective source of economic data and to provide objective forecasts.

My prognosis for the economy is for surprisingly rapid growth of real GNP at an annual rate of more than 5 percent to be reported for the first quarter of 1981, when data are published about three weeks from now. However, I believe that the pace of the economy's growth has been abating somewhat over the months of the first quarter and that a substantial slowdown from this rate of growth will be recorded in the second quarter. In fact, I would not be surprised to see little or no further growth in real GNP on balance for much of the rest of this year.

One major reason for this forecast deceleration of the economy's growth is the expected slowdown in the growth of employment and personal income, together with the recent rapid decline in the personal saving rate, to a very low level. A second important negative influence on the economy is the expected decline in residential construction activity, following from the sharp drop in housing starts in February.

On the other hand, there is one important factor--the lean level of business inventories--which suggests that a sharp decline in GNP in the second quarter is unlikely. The present low level of inventory stocks precludes the need for any severe inventory liquidation in the near term even if, as I expect, real final sales grow more slowly or decline. This is a major stabilizing factor in the current picture. Furthermore, a continuing recovery in capital spending, as projected in the survey of business spending plans released last month by the Bureau of Economic Analysis, also would lend support to the economy during the remainder of the year.

Over the longer term, basic forces are changing in the U.S. economy in ways that will dramatically alter our economic and social conditions over the course of the 1980's. The decelerating growth of the labor force foreseen from demographic data heralds generally tighter labor markets over the course of the 1980's, especially at the entry levels. The resulting faster automation of unskilled functions and the growing average experience and maturity of the labor force will help to boost productivity growth from its very poor levels of recent years. While further increases in energy prices are possible, it is less likely than in the 1970's that the world will experience many fold increases in these prices. This alone should make it somewhat easier to get inflation under control, although determined policies also will be necessary to do so. Thus, factors are at work that suggest that some of the serious economic problems of the 1970's may be subject to natural corrective forces during the 1980's.

FY 1982 BUDGET INCREASES

I see that your budget increases initially expected to be requested for FY 1982 have been withdrawn. What projects will you not be able *to conduct? What effect will this have on your overall mission? (NOTE: Improvements recommended by the Advisory Committee on GNP Data Improvement Projects 1977 report to GNP will not be made. This will have some effect on ESA's ability to estimate more accurately GNP and the Producers' Durable Equipment component of GNP).*

The five projects are identified below along with the effects of their withdrawal.

Improvements in the Plant and Equipment Survey ($604,000 and 15 positions)

This project would have implemented the recommendations of the GNP Data Improvement Project Report (Creamer Committee) for improvements in the sampling procedures and estimating methodologies of the Plant and Equipment (P&E) Survey. The Creamer Committee, an advisory committee of private experts sponsored by OMB, studied and proposed improvements to the data sources underlying the GNP accounts, including BEA's estimates of investment from the P&E Survey. This project also would have financed the development of the concepts and statistical procedures needed to improve the estimates of business purchases of plant and equipment for lease. (The need to improve the latter was recognized after completion of the Creamer Committee study.)

The withdrawal of this project means that the quality of the P&E survey estimates is likely to be increasingly less reliable. More specifically, the following may be expected:

- Sample attrition has been substantial in recent years--the number of respondents has dropped almost 30 percent since 1972, despite some work to replenish the sample. BEA would continue to add about 500 new companies to the mailing list each year, but this would not be sufficient to keep up with attrition. The total number of responses probably will continue to decline. Coverage ratios are dangerously low (below 20 percent) for many industries.
- The plan to update benchmark revisions more frequently than has been done in the past (about every 10 years) would not be implemented.
- Reviews and examinations of statistical techniques and procedures used to prepare the estimates of plant and equipment expenditures would not be undertaken.
- Based on the average of the last 5 years, only about 5 companies out of the 16,000 respondent companies would be contacted each year for validation of data.
- Studies to evaluate and reduce estimating errors would not be conducted.
- BEA would not be able to develop and implement improved procedures and sample information to ensure that leased equipment is measured properly. (The purchase of plant and equipment for lease has become widespread in recent years and it now accounts for a significant part of total investment. It is increasingly difficult to measure these purchases adequately because of the complexities of the leasing arrangements and changes in the accounting standards.)

Improved data and analysis of the service industries ($265,000 and 7 positions)

This request would have provided resources necessary to improve BIE's expertise in, and expand its analysis of, the service industries. This improved expertise and analysis would have been used to develop further a base of service industry support for Commerce and non-Commerce programs.

The net impact is that BIE will be unable to expand its coverage and analysis of an economic sector which now comprises more than half of our GNP and which is becoming an even more important factor in the growth of employment and foreign trade. Some minor shifts may be made within the resources currently used to cover service industries, but these shifts will not allow BIE to greatly enhance its monitoring and analysis in this fast growing segment of the U.S. economy. Greater attention may be provided to some areas, e.g., wholesale and retail trade, engineering, and management consulting services, but this will be at the expense of the other service industry areas.

Current surveys of direct investment ($386,000 and 10 positions)

This request for funds would have financed the additional workload that results from the International Investment Survey Act of 1976, P.L. 94-472, (Act), and from increases in international investment activity. The Act requires BEA to conduct: (1) benchmark surveys of U.S. direct investment abroad and of foreign direct investment in the United States on an accelerated schedule, (2) a regular data collection program of current surveys for years not covered by the benchmark estimates to provide current information related to international investment, and (3) special surveys and studies on a timely basis to provide information on specific aspects of international investment needed for policy formulation. This request for financing of $386,000 would have provided only for the current surveys. (In FY 1980, Congress appropriated additional financing of $150,000 for the acceleration of the benchmark surveys. Financing for special surveys and studies would be provided on a reimbursable basis by the agency that requests the work.)

This request would have financed on a regular basis the current surveys identified below:

- For foreign direct investment in the United States, BEA would conduct two current surveys: (1) the first would collect on an annual basis data on the financial and operating characteristics of the major foreign-owned U.S. businesses, and (2) the second would require that reports be filed at the time a U.S. business is acquired or established by a foreigner in order to provide up-to-date information on the trends in such investment by foreigners. The latter survey would cover the source of funds of the investment--whether borrowed in the United States, borrowed abroad, or internal funds of the foreign investor--and would secure data similar to that in the annual survey so that the data base is kept current. Both surveys would cover equity investments in U.S. real estate by foreigners.

- For U.S. direct investment abroad, BEA would develop and initiate a new annual survey of U.S. owned foreign affiliates. This survey would secure data on affiliates' employment and labor costs, trade between the U.S. parents and their affiliates, balance sheet "position" data rather than "change" data, and income statement data, including taxes paid. Similar information also would be secured on the U.S. parent companies.

> The survey sample would consist of 8,000 out of a universe of 35,000 foreign affiliates.

BEA has initiated two of the three aforementioned current surveys of direct investment. These two are the surveys of foreign direct investment in the United States. They are being financed on a temporary basis by the International Trade Administration, which was anxious to start them as soon as possible, and by BEA with funds available because of a 1 year delay in conducting the benchmark survey of foreign direct investment in the United States. The third current survey is the annual survey of U.S. direct investment abroad for which planning would have started in FY 1982. Without additional financing, BEA will have to reduce or eliminate these current surveys.

Future industrial prospects ($693,000 and 18 positions)

This request would have provided resources to conduct a program to identify industries that are likely to have serious problems, or an extraordinary potential for growth in the future. This program would have documented the factors contributing to such problems or potential, and would have analyzed possible responses by industry, labor, and Government to minimize adverse developments, promote positive adjustment, and ensure success of the potential growth industries. The objectives of this work were: (1) to give advance warning of the problems that may confront U.S. industries so that business leaders and Government will have time to formulate a rational response, (2) to alert policymakers to the opportunities for fostering growth industries, not necessarily by direct assistance, but by providing an economic environment which does not hinder such growth, and (3) to determine which policy instruments are likely to be most effective in promoting industrial development.

BIE may be able to shift some existing resources in order to develop measures of past performance, but without the increase we will be unable to: (a) determine and measure the economic variables that contribute to this performance, (b) predict future performance on the basis of forecasts of these variables, or (c) conduct the comprehensive analyses that would examine the impact of Government policies on the economic performance of these industries. The net result is that we will be unable to provide Government and business with detailed information and analyses for the development of appropriate policy responses to projected marketplace changes.

Improved measures of personal income--revised estimates of inter-county commuting ($244,000 and 5 positions)

This project would have financed improvements in BEA's State and county measures of personal income by providing for a one-time major revision in the preparation of the wage and salary data on a place-of-residence basis. Wage and salary data collected on a place-of-work basis must be adjusted for commuting to obtain the place-of-residence data required for the preparation of estimates of the income of residents of States and counties.

The Bureau of Census reported recently that there will be a delay in its tabulation of the source data that BEA would use for this project (the 1980 decennial census journey-to-work questions). This delay means that BEA cannot start its work until FY 1983. Wage and salary data by place-of-residence are the largest component of BEA's State and county measures of personal income, and their accurate preparation is essential to reliable measures of personal income. The consequence of the stretchout in this project will be a deterioration in the personal income estimates, as the distance from the old base year (1970) lengthens.

TRANSFER OF THE OFFICE OF FEDERAL STATISTICAL POLICY AND STANDARDS

Pursuant to the Paperwork Reduction Act of 1980, P.L. 96-511, the Office of Federal Statistical Policy and Standards is being transferred to OMB effective today (April 1, 1981).

What effect will this transfer have on the capabilities of the Department to perform its remaining economic analysis functions?

This transfer will have no effect on the Department's economic analysis functions.

Has the transfer itself been implemented? (It is by law effective April 1, 1981).

The transfer of functions was effective April 1, 1981. Completion of all housekeeping details associated with the transfer is underway.

How many people are involved in this transfer? How many dollars?

There are 25 permanent positions and $1,235,000 involved in this transfer.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

PLANT AND EQUIPMENT SURVEY

1. The improvements to the Plant and Equipment Survey cited in the budget submission were made primarily in response to the GNP Data Improvement Project Report. The following questions seem to be appropriate:

> *--With an increase in cost ($604,000 annual reoccurring) and corresponding respondent burden to the public, what will the increased accuracy be in this survey?*
>
> BEA would introduce procedures that would provide more reliable estimates by reducing substantially the types of statistical errors that were revealed by the revisions in the Plant and Equipment Survey, published last fall. The statistical revisions (i.e., the revisions excluding those that result from extending the coverage to additional industries) increased the level of investment by 4.6 percent in 1967, 11.1 percent in 1972 and 29.5 percent in 1979.
>
> The following improvements would be made to increase the accuracy of the survey.
>
> 1. Systematic procedures would be introduced to restore and maintain the survey panel where coverage is inadequate. Coverage is considered to be adequate when 50 percent or more of an industry's capital spending is accounted for by sample companies. Although the present sample is adequate for some industries, such as petroleum, primary metals, motor vehicles, chemicals, and public utilities, it is not for other industries, such as apparel manufacturing, mining, retail and wholesale trade, services, and construction.
>
> 2. Improved statistical techniques would be introduced to evaluate better estimating errors. For example, BEA would "benchmark" the survey more frequently. That is estimates of plant and equipment expenditures based on

independent data would be prepared periodically to cross-check the information collected in the Plant and Equipment Survey.

3. New procedures would be introduced to validate the accuracy of respondents' reports. Continuous contact with respondent companies would be maintained to ensure that survey instructions are clear and up-to-date in the light of changing investment and accounting practices, and that continuity of reporting is maintained.

4. Concepts and statistical procedures would be developed to improve estimates of the purchases of plant and equipment for lease. Better estimates of leasing are needed for the preparation of reliable estimates of total expenditures on plant and equipment.

Precise measurement of the increased accuracy resulting from these improvements is not possible. However, it is clear that the accuracy would be improved substantially if the survey is placed on a more solid footing.

--*Could you provide examples and quantify or qualify the unreliability of the estimates in the past?*

The revision in the Plant and Equipment Survey published last fall revealed that the survey results contained large errors. The table below shows the statistical revision.

Statistical revision as a percent of previously published P&E expenditures

Year	Total	Manufacturing	Nonmanufacturing
1948	.6%	.0%	1.1%
1958	-.6	.0	-1.0
1963	-.3	1.4	-1.5
1967	4.6	8.9	1.2
1972	11.1	9.0	12.3
1979	29.5	21.5	35.9

--*Have any major economic analysis or policy recommendations of the Council of Economic Advisers (CEA), the Federal Reserve Board, or others been affected adversely by erroneous estimates in the past?*

We do not know the extent to which policy recommendations of the CEA or others were affected, but there is no doubt that the CEA regarded the problems with the P&E survey data as very serious. For example, Mr. Lyle E. Gramley, member of the Federal Reserve Board of Governors (and former member of the CEA) in a letter of October 3, 1980 to the Honorable James T. McIntyre, Jr. (then Director of OMB) stated:

> "Over the course of the past two decades, the P&E Survey has been of vital importance in assessing the course of plant and equipment spending. During recent years, however, the survey has begun to give results that appear to be so far from the mark as to destroy its usefulness. A thorough overhaul of that survey is desperately needed. I can't think of any statistical series for which an equivalent expenditure of funds would be likely to yield comparable benefits. I strongly urge OMB to find ways to finance it."

FOREIGN INVESTMENT IN THE UNITED STATES

2. Please provide for the record a listing by Department and Agency, the personnel and funding of all the Government's surveys on Foreign Investment in the United States.

The Bureau of Economic Analysis (BEA) of the Department of Commerce conducts quarterly, annual, and time of acquisition surveys of foreign direct investment in the United States (FDIUS). BEA's surveys consist of the following: (1) Quarterly, Transactions of U.S. Corporation with Foreign Parent, (2) Quarterly, Transactions of Unincorporated U.S. Business Enterprise with Foreign Parent, (3) Quarterly, Transactions of U.S. Banking Branch or Agency with Foreign Parent, (4) Report on the Foreign Person's Establishment, Acquisition, or Purchase of the Operating Assets of a U.S. Business Enterprise, Including Real Estate, and (5) Interim (Annual) Survey of Foreign Direct Investment in the United States.

The Office of the Secretary (O/S) of the Department of Treasury conducts surveys of foreign portfolio investment in the United States. The Economics and Statistics Service (ESS) of the Department of Agriculture has a registration program (not a survey program) that collects selected information on agricultural purchases at the time of acquisition by a foreigner.

Shown below is a summary of the FY 1981 personnel and funding levels for the three Departments (including the aforementioned registration program of the Department of Agriculture).

	Personnel	Funds ($000's)
BEA, Department of Commerce	13	$450
O/S, Department of Treasury	22	1,506*
ESS, Department of Agriculture. . . .	25	509
Total.	60	2,465

* Includes 16 positions and $1,206,000 associated with the Federal Reserve System, who collects the data as an agent for the Treasury Department.

In addition to the BEA personnel who work on the quarterly, annual, and time of acquisition surveys of FDIUS (noted above), BEA resources are assigned alternately to the benchmark survey of FDIUS and to the benchmark survey of U.S. direct investment abroad. As mandated by the International Investment Survey Act of 1976, each of these benchmark surveys is conducted once every 5 years. The former takes 2 years to complete, the latter 3 years, and the personnel are shifted from one to the other. An average of 18 employees and $552,000 is required for each of the 2 years to conduct the benchmark survey of FDIUS. The next survey of FDIUS covering 1980 is scheduled for completion in the latter part of 1982. An average of 20 employees and $625,000 is required for each of the 3 years to conduct the benchmark survey of U.S. direct investment abroad.

3. What are the results of the latest surveys of foreign investment in the United States by the Bureau of Economic Analysis?

Quarterly Balance of Payments Surveys: (1) Transactions of U.S. Corporation with Foreign Parent, (2) Transactions of Unincorporated U.S. Business Enterprise with Foreign Parent, and (3) Transactions of U.S. Banking Branch or Agency with Foreign Parent

The quarterly balance of payments surveys show that total capital inflows for foreign direct investment in the United States were $8.2 billion in 1980, down from $9.7 billion in 1979. The decrease was attributable to sharply lower inflows on equity and intercompany accounts, down to $2.4 billion in 1980 from $6.0 billion in 1979, partly offset by a large increase in reinvested earnings, to $5.8 billion in 1980 from $3.7 billion in 1979. Inflows for equity purchases declined by $0.7 billion, to $2.8 billion in 1980. Transactions on intercompany account shifted from inflows of $2.3 billion in 1979 to outflows of $0.6 billion in 1980. A balance of payments article presenting this data will be published in about 1 month.

Report on a Foreign Person's Establishment, Acquisition, or Purchase of the Operating Assets of a U.S. Business Enterprise, Including Real Estate

In January 1981, the results of a new survey covering the acquisition or establishment of U.S. business enterprises by foreign persons were published. It covered 1979 transactions and showed that investment outlays to acquire existing U.S. business enterprises were $10.4 billion; those to establish new U.S. business enterprises were $1.1 billion. Of these investment outlays, existing U.S. affiliates of foreign persons accounted for $9.5 billion, and foreign direct investors for $2.0 billion.

Total assets of all acquired and established U.S. business enterprises were $29.6 billion, of which $12.8 billion was in banking and $4.2 billion each in petroleum and manufacturing. Acquired enterprises had total assets of $27.4 billion, employed 283,000 persons, and owned 125,000 acres of U.S. land. Established enterprises had total assets of $2.0 billion and owned 235,000 acres of U.S. land.

Interim Survey of Foreign Direct Investment in the United States

In July 1980, the results of the first annual sample survey, covering 1977, of foreign direct investment in the United States were published. The sample consisted of non-bank U.S. affiliates of foreign persons that had assets, sales, or net income in excess of $5.0 million or owned 200 acres or more of U.S. land. Based on available financial and operating data, it is estimated that the sample covered about 94 percent of the universe data for all U.S. affiliates. The sample survey data showed that:

1. U.S. affiliates' assets were $131.5 billion at year-end 1977. About 75 percent of the total was accounted for by

affiliates with parents in the Netherlands, Canada, the United Kingdom, Germany, and Japan.

2. The gross book value of affiliates' land was $7.9 billion. Affiliates owned 5.6 million acres and leased 28.8 million acres. By State, affiliates owned the largest number of acres in Tennessee, Nevada, Colorado, Wisconsin, and New Mexico. Land used for agricultural purposes accounted for 3.1 million of the acres owned and 1.6 million of acres leased.

3. Affiliates employed 1,122,207 persons. Their employment was largest in New York, California, and New Jersey.

4. For manufacturing affiliates, the hourly-wage rate of production workers was $5.81.

BUREAU OF THE CENSUS

STATEMENT OF DANIEL B. LEVINE, ACTING DIRECTOR

ACCOMPANIED BY:

- **GEORGE E. HALL, ASSOCIATE DIRECTOR FOR DEMOGRAPHIC FIELDS**
- **SHIRLEY KALLEK, ASSOCIATE DIRECTOR FOR ECONOMIC FIELDS**
- **BARBARA A. BAILAR, ASSOCIATE DIRECTOR FOR STATISTICAL STANDARDS AND METHODOLOGY**
- **REX L. PULLIN, ASSOCIATE DIRECTOR FOR FIELD OPERATIONS**
- **W. BRUCE RAMSAY, ASSOCIATE DIRECTOR FOR INFORMATION TECHNOLOGY**
- **JAMES D. LINCOLN, ASSOCIATE DIRECTOR FOR ADMINISTRATION**
- **THOMAS E. BECK, BUDGET OFFICER**
- **NANCY A. RICHARDS, DIRECTOR, OFFICE OF BUDGET**

BUDGET REQUEST

Senator WEICKER. Good morning, the next request is that of the Bureau of the Census. Amount requested is $156,316,000, which is a decrease of $55,950,000 from the 1982 base. It provides for 2,559 permanent positions. Appearing on behalf of this request is Daniel Levine, Acting Director of the Bureau of the Census. We are pleased to have your statement. What happened to the previous Director?

Mr. LEVINE. Mr. Barabba resigned on January 10, and returned to private industry. He is now with Eastman Kodak.

Senator WEICKER. How long have you been with the Census?

Mr. LEVINE. I first entered the Bureau of the Census in 1948.

Senator WEICKER. Why couldn't you have done this thing? Why do we have to haul somebody in at the last minute from the outside to head up the operation? Do you think you could have handled this thing yourself?

[Laughter.]

Mr. LEVINE. I think the comment of the audience probably answers you. The position of Director is one which is a Presidential appointment and the President decides whom he wishes to appoint.

Senator WEICKER. I should think on something as technical as this that someone who is in the service and is professional would be more competent to handle some of these, for 1 year or 2 years, whatever it is.

Mr. LEVINE. Mr. Barabba was with the Bureau between 1973 and 1976 and he came back in late 1978.

Senator WEICKER. I believe some people said things were not being handled right?

Mr. LEVINE. There were some questions being raised and for whatever reason the administration decided to make a change and selected Mr. Barabba. I would point out that I think the Director made quite a contribution.

Senator **Weicker**. I think that is true. That I don't deny; but I think there are certain functions that are best in the hands of the career people, not politicians. This is certainly one of them.

PREPARED STATEMENT

In any event, I am not the one that should choose the Director or dictate the policies. It is a matter of my own personal curiosity. We have a statement from you. Maybe you would like to enter that in the record in its entirety and give us your synopsis of it. Is that possible?

Mr. **Levine**. I would be happy to do that.

[The statement follows:]

STATEMENT OF DANIEL B. LEVINE

I am pleased to have this opportunity to appear before you and present the 1982 budget for the Bureau of the Census.

PROGRAM HIGHLIGHTS

The 1982 budget totals $156,316,000 and provides for the Bureau's two appropriations. The request for Salaries and Expenses totals $60,583,000 and supports the current statistical programs. The request for Periodic Censuses and Programs totals $95,733,000 and provides for the economic and demographic censuses, intercensal demographic estimates, geographic support functions, and the improvement of electronic data processing facilities.

The current request represents a reduction of $5,796,000 from the budget submitted under the Carter Administration. A decrease of $3,297,000 in Salaries and Expenses includes reductions of $177,000 for travel, consulting services, and equipment costs; $565,000 for personnel compensation and benefits from base programs; and $2,555,000 related to previous requests for program increases that have been eliminated. Periodic Censuses and Programs have been reduced by $2,499,000. This total reflects reductions of $1,153,000 for personnel compensation and benefits; and $1,346,000 for travel, consulting services, and equipment costs.

SALARIES AND EXPENSES

The request of $60,583,000 for the current statistical programs represents an increase of $5,983,000 over the 1981 appropriation. Adjustments to base include $3,441,000 for the cost of the October 1980 pay increase, $2,050,000 for other increases, $742,000 for other decreases, and $116,000 for transfers. Requested program changes total $1,118,000 over the 1982 base. This amount provides for two new program initiatives. These initiatives are proposed despite other budget reductions and a constrained budget climate because the first responds to an uncontrollable workload requirement and the second offers potential future savings in costs and respondent burden. The first program increase totals $833,000 and 35 positions and is required to meet the sharp rise in the workload associated with the increased volume of foreign trade. Since the last workload increase request in fiscal 1976, the volume of import and export data to be processed has been increasing steadily. For example, by 1982 the number of items to be processed will have increased by approximately 47 percent for imports and 96 percent for exports as compared to 1976. Past and ongoing efforts to improve productivity and attain operating efficiencies have been successful, but the Bureau has not been able to absorb all of the increased costs through these methods. The total increase in workload cannot be met without additional resources.

The second increase totals $285,000 and 4 positions and provides for the development of statistical matching procedures. Statistical matching techniques can minimize the need for new surveys by increasing the use of administrative records as data sources, and thereby reduce respondent burden. Efforts will include development of automated techniques to test procedures for protecting respondent confidentiality, and automated systems to code and classify respondent data. In view of the increased emphasis on the use of non-survey data sources, statistical matching will become very important as a means of meeting mid-decade data needs.

PERIODIC CENSUSES AND PROGRAMS

I would now like to highlight our 1982 request for the Periodic Censuses and Programs appropriation.

ECONOMIC CENSUSES

A total of $9,340,000 is requested for the 1982 Economic Censuses. Operations in 1982 will include the final determination of data to be collected, the completion of clerical processing specifications, and the preparation of computer programs. Data collection activities of the National Travel Survey and the Truck Inventory and Use Survey also will begin.

CENSUS OF GOVERNMENTS

The budget includes $4,873,000 for the 1982 Census of Governments and provides for the training of enumerators, and data collection for the taxable property values study; completion of data keying and editing, and initiation of processing for governmental organization data; and completion of planning and questionnaire design, and initiation of data collection for the employment and finance phase of the census.

CENSUS OF AGRICULTURE

A total of $14,944,000 is included for the 1982 Census of Agriculture. Funding will provide for the completion of most planning activities, the printing of report forms, acquisition and verification of source lists, conduct of the Farm and Ranch Identification Survey, and distribution of census publicity materials.

INTERCENSAL DEMOGRAPHIC ESTIMATES

The request for the Intercensal Demographic Estimates program is $4,011,000. This includes $2,176,000 for the base program which provides for the preparation of population and per capita income estimates for administering the General Revenue Sharing program, and $1,835,000 for an expanded administrative records program to meet the need for improved statistics on the size, characteristics, and distribution of the population during the 1980's. As 1980 census counts become outdated, this program will supply information suitable for many uses. The program will provide for estimates of population size and characteristics, development of geographic coding procedures, preparation of data on international migration, and development of new methodology for estimating census undercount at the State level.

DATA PROCESSING EQUIPMENT

The budget provides $16,017,000 for data processing equipment in 1982. Included is $10,478,000 for a new computer system needed to fulfill requirements while the Bureau undertakes a major systems acquisition to satisfy long-range workload requirements. The balance of funding includes contractual support, printers, card readers, terminals and minicomputers.

1980 DECENNIAL CENSUS

I would now like to summarize the status of the 1980 Decennial Census. Despite the publicity and attention surrounding the census counts in certain areas, we consider the census to be a tremendous success, and three important milestones are now behind us. The first milestone is represented by the completion of the data collection stage. The second milestone was the transmittal of state-by-state population counts to the President for use in reapportioning the U.S. House of Representatives. This requirement was accomplished by December 31, 1980, as required by law. The completion of the third milestone was accomplished last week when the final detailed substate counts used for State reapportionment and legislative redistricting were delivered. This requirement was accomplished prior to April 1, as required by law.

The 1980 census counted 226.5 million people. This count includes nearly five million more persons than the official estimate for April 1, 1980, that was based on the 1970 census. We owe this success to the outstanding cooperation of the American people and the dedicated efforts of thousands of public officials and private individuals throughout the country. One of the key objectives of the census was to reduce the undercount, particularly among minority groups. A large increase in resources was directed to this objective and we feel that the payoff--a significant increase in coverage--was well worth the investment.

The census programs have not been free of problems. There have been 45 lawsuits filed against the Bureau. Broadly, the lawsuits involve such things as adjusting the 1980 census results for any undercount, allegations of mismanagement and inappropriate census procedures, and access to data which are confidential by statute. Some have simply demanded that the Bureau accept the locally derived estimate in lieu of the census count.

The 1982 budget includes $42,052,000 for the 1980 Decennial Census and provides for continued processing activities and the publication of census data. Publications will include data for both population and housing as well as special subject reports covering migration, health, and place of work. Population and housing characteristics will be published for all geographic areas ranging from tracts and blocks up through places, counties, standard metropolitan and urbanized areas, and States.

1981 SUPPLEMENTAL

The final item that I would like to discuss is the Bureau's 1981 supplemental request for $24.2 million. As you know, the additional requirements related to the 1980 Decennial Census were first brought to your attention last year. Included in the request are $22.8 million for the census and $1.4 million for the intercensal demographic estimates program. The latter amount will be used to reimburse the Internal Revenue Service (IRS) for increased costs related to obtaining and coding place of residence information from individual income tax forms for 1980. These data are critical to processes employed in the preparation of population and per capita income estimates used for General Revenue Sharing and other programs.

During fiscal 1980, the Bureau reported a $49.8 million shortfall in the total budget for the decennial census. Most of this shortfall was due to increased costs of data collection, generally as a result of enumerating more people than expected. An additional $10 million was requested as a contingency to cover expenses resulting from various lawsuits. The Congress appropriated for fiscal 1980 a supplemental amount of $27 million including $10 million for the litigation contingency. For fiscal 1981, the remainder of the shortfall, $32.8 million, would be funded via the supplemental request of $22.8 million and the litigation funds would be used for direct operating purposes. Thus in 1981, if this action is approved by the Congress, no funds will be available to undertake any activities currently or prospectively directed by the courts.

Because of uncertainties related to the availability and timing of the additional funds, actions have been taken to delay some activities. Most of these actions were in the form of delaying work until later years that was originally scheduled for fiscal year 1981. The primary example is the clerical processing of the long form questionnaires, a task originally scheduled for completion in the summer of 1981 and now rescheduled to be completed by the end of December. As a result, there will be a delay of 6 months or more in producing tabulations of sample data. As a further cost saving measure, the place of work question is being coded for one half of the data collected.

The Bureau also has postponed the publication of basic counts by block until 1982. Other changes have been made and we will be happy to explain these to the Committee if so desired.

If the supplemental were not approved, the situation would be critical. We would be forced to immediately close our three processing sites and release approximately four thousand temporary employees. In addition to the delay in the processing of the long form questionnaires, the Bureau would be forced to make other changes such as:

1. Stop work on the post enumeration program which is a major tool used to estimate the undercount and, depending on the outcome of certain court appeals, may be legally required;
2. Delay all work on the publication of reports from the 1980 census;
3. Stop work on the production of maps, a necessary part of most publications; and
4. Stop work on the basic tabulations for Puerto Rico and other outlying areas.

Obviously, these are undesirable alternatives which the Bureau would not want to implement. Also, there would be considerable costs incurred next year for rehiring, retraining, and reopening processing centers to complete the processing.

I would like to emphasize that the timing of a decision and receipt of funds are crucial to the orderly completion of census activities and the utilization of the huge investment which has been made in this program. According to our estimates, the present decennial funding will be depleted by June 30. The supplemental funding will be needed by June 1 in order to avoid a large-scale reduction in force in all areas of the Bureau. We ask that you give prompt attention to this serious problem.

This concludes my prepared statement.

Thank you, Mr. Chairman.

INTRODUCTION OF ASSOCIATES

Mr. LEVINE. I would like first to introduce my colleagues at the table, on my right is Ms. Kallek who is Associate Director for Economic Fields; Mr. Hall, immediately on my right, is Associate Director for Demographic Fields; on my left is Mr. Beck, our Chief Budget Officer and I have with me other members of our staff.

SUMMARY STATEMENT

As we indicate, the 1982 budget totals $156,316,000 and provides for the Bureau's two appropriations, first the salaries and expenses appropriaiton, which total $60,583,000 and supports our current statistical program and our request for periodic census and programs, which totals $95,733,000 and provides for the economic and demographic censuses, our intercensal demographic estimates, geographic support function, and the improvement of our electronic data processing equipment.

SALARIES AND EXPENSES

We have noted in our statement the reductions which we have taken from the budget submitted by President Carter. We also mention the increases in our statement. The first program increase which totals $833,000 and 35 positions is required to meet the sharp rise in the workload associated with the increased volume of foreign trade, that is, the number of documents which we process in order to produce monthly balance of trade data.

Since the last workload increase requested in fiscal 1976, the volume of import and export data to be processed has increased very steadily, by approximately 47 percent for imports and 96 percent for exports as compared to 1976;and although we have made, I believe, efforts to improve our productivity and have accomplished significant improvements we have not been able to absorb all of the increased costs and the number of documents is increasing. Therefore, we are requesting additional resources for that purpose.

Our second increase in the salary and expense account totals $285,000 and four positions and provides for the methodological development of statistical procedures which we expect will minimize the need for new surveys by increasing the use of administrative records and data sources and reducing the responding burden.

PERIODIC CENSUSES AND PROGRAMS

We have within our periodic censuses and programs a number of different accounts which I will just highlight. We request a total of $9,340,000 for the economic censuses activities for 1982. Our operations include final determination of data to be collected and completion of our specifications in preparation of our data processing.

The census of governments budget includes $4,873,000 in the 1982 request for the 1982 census of governments, and provides for training and hiring of the staff, data collection, keying, and related activities. A total of $14,944,000 is requested for the 1982 Census of Agriculture, again for the completion of those activities preparatory to that census. The intercensal demographic program request is $4,011,000, which includes

$2,176,000 for the base program—the source from which we develop population and per capita income estimates for use in the revenue sharing program, and $1,835,000 for the expanded administrative records program to meet the need for new improved statistics on size, characteristics, and distribution of the population during the decade of the 1980's.

In the data processing area we request $16,017,000 for data processing equipment, including $10,478,000 for new computer systems needed to fulfill requirements while the Bureau undertakes a major systems acquisition to satisfy long range workload requirements.

1980 DECENNIAL CENSUS

Turning to the 1980 decennial census I would like to summarize briefly what we have accomplished and what problems remain. We believe that we have accomplished a tremendous amount and that the results will indicate the census is the best that has been taken to date. We have three important milestones behind us.

The first, the completion of the data collection stage; the second is the transmittal of the particular State by State counts to the President for use in reapportioning the House of Representatives as required by law by December 31.

Finally, the completion of the third milestone, which was accomplished 1 week ago when we delivered the last of the detailed substate counts which are used by each of the States for their redistricting purposes within State reapportionment, and that was required by April 1, a tremendous accomplishment on the part of the Bureau staff in accomplishing that before today.

The 1980 census as I believe you are aware, Senator, counted 226.5 million people, including nearly 5 million more people than the official estimate for April 1, 1980 as based on our projections from 1970. We owe this success to the outstanding cooperation of the American people, dedicated efforts of thousands of public officials, the Congress, mayors, all sorts of people throughout the country.

The key objective of the census was to reduce the undercount, particularly among minorities and a large increase in resources was directed to this effort and we feel that the payoff in significant increase in coverage was well worth the investment.

We do not want to say that we are free of problems. As you probably are aware there have been to date some 45 lawsuits filed against the Bureau and the lawsuits involve three basic areas, adjusting the census results for the appropriate undercount, if any, allegations of mismanagement and inappropriate census procedures being utilized, and finally an issue of access to data which we believe are confidential by statute. Some have simply demanded, of course, that the Bureau accept any locally derived numbers that the mayors and others may feel is appropriate in view of the census count. The 1982 budget request of $42,052,000 for the completion of the 1980 decennial census, provides for continued processing activities and the publication of census data.

1981 SUPPLEMENTAL REQUEST

I would like to take a moment, however, to discuss the Bureau's 1981 supplemental request, which is also before this committee for $24.2 million. As you know, the additional requirements related to the decennial census were first brought to the attention of this committee last year. Included in this request are $22.8 million for the census and $1.4 million for intercensal demographic estimates. The latter amount, $1.4 million, is necessary to reimburse the Internal Revenue Service, which under contract to the Bureau has developed increased costs related to obtaining residence information from tax forms for 1980 which are being collected now.

These data are critical to the process employed in the preparation of the intercensal population and per capita income estimates which are used to apportion more than $6 billion through the revenue sharing program each year as well as for many other programs.

During fiscal 1980, the Bureau reported a $49.8 million shortfall in the total budget for the decennial census. Most of this shortfall was due to increased costs of data collection, generally as a result of enumerating more people than expected. An additional $10 million was requested as a contingency to cover expenses resulting from various lawsuits. The Congress appropriated for fiscal 1980 a supplemental amount of $27 million including $10 million for the litigation contingency. For fiscal 1981, the remainder of the shortfall, $32.8 million, would be funded via the supplemental request of $22.8 million and the litigation funds would be used for direct operating purposes. Thus in 1981, if this action is approved by the Congress, no funds will be available to undertake any activities currently or prospectively directed by the courts.

The Congress did consider the entire shortfall amount, close to $50 million, but because of budget ceilings felt that we should break it into two pieces. They approved the fiscal 1980 supplemental and indicated that our needs for additional funds would be considered in 1981. We did not have an opportunity to inform the Congress that our time schedule is such that we are in a dire situation and are in need of the supplemental for fiscal 1981. Because of uncertainties related to the availability and timing of the additional funds actions have been taken to delay some activities, but I would like to emphasize that given the way it is put forward at the moment, if the action on our request for $22.8 million in the supplemental is carried forward by the Congress and at the direction of OMB, the $10 million available for litigation is moved into an operating fund. The Bureau would not have any funds available to undertake any activities currently or prospectively directed by the courts.

CURTAILMENT OF PUBLICATIONS AND OTHER WORK

The actions we have taken to date basically are in the form of curtailing the amount of publication and other work we will do and to delay work until later years that were originally scheduled for 1981.

The primary example that I would give you is the clerical processing of the long form which contains the detailed information on socioeconomic characteristics such as income, family characteristics, education, work experience, labor force—all data which are crucial to the apportionment of many billions of dollars and the distribution of those funds by the Government or by local communities to their constituent substate areas.

We feel that as a result of the actions that we have taken there will be delay of approximately 6 months or more in producing the tabulations of the sample data.

As a further cost saving measure the place of work question is being coded for one-half of the data collected. The Bureau also has postponed a number of other activities such as the publication of basic counts and as I say we will be happy to describe the additional changes if you wish.

I do want to emphasize that if the supplemental were not to be approved the situation would be critical, we would be forced to immediately close our three processing sites which are dealing with the long form coding and release of approximately 4,000 temporary employees.

In addition to the delay in the processing of the long form, the Bureau would be forced to make a number of other changes which are detailed in our statement. Obviously these are very undesirable alternatives which the Bureau would not want to implement. Also there would be considerable costs incurred either in fiscal 1982 or fiscal 1983 for rehiring, retraining, reopening processing centers, and dealing with the rescheduling of all of our activities.

TIMING OF SUPPLEMENTAL REQUIREMENT

I would like to emphasize that the timing of a decision and receipt of funds are crucial to the orderly completion of the census activities and the utilization of the huge investment which has already been made in the 1980 decennial program. According to our estimates, the present decennial funding will be depleted by June 30. The supplemental funding will be needed by June 1 in order to avoid a large-scale reduction in all areas of the Bureau, and we will need some indication of the directions of the Congress or the expression of interest in the Congress in this area in order to avoid closing our three processing sites.

Accordingly, we ask that you and your committee give prompt attention to this serious problem. Thank you, Mr. Chairman.

Senator WEICKER. The supplemental request was for a $49.8 million shortfall. Is that correct?

Mr. LEVINE. That is correct.

Senator WEICKER. OMB restricted you?

Mr. LEVINE. That is correct.

Senator WEICKER. What is going to happen to this other $9 million?

Mr. LEVINE. They have directed that the other $9 million be handled by reprograming of funds which the Congress appropriated in fiscal 1980 to deal with any unforeseen demands by the courts as regards litigation. Therefore the impact of that would be that we would not be able to respond to any directive.

PENDING LAWSUITS

Senator WEICKER. You said you had 45 lawsuits around the country. Where are the funds coming from?

Mr. LEVINE. The 45 lawsuits, unless directed otherwise by the courts for the Bureau to undertake specific action are carried by the Justice Department in terms of the legal action which they undertake with the U.S. attorneys. But we are under court order, for example in Essex County and New York City, to undertake certain statistical activities which will cost about $4 million.

The New York case is before the second circuit on appeal. Depending on the results of the appeal, it may be that we will be directed by the court to undertake those statistical activities at a cost approximating $2.5 million. Those funds will not be available.

MID-DECADE CENSUS

Senator WEICKER. Does the fiscal year 1982 budget address the needs for a mid-decade census?

Mr. LEVINE. It addresses the issue of a mid-decade census via a request for $1.8 million for the development of better techniques for statistical matching of administrative records. Basically, there is a question as to exactly what is required, or what is desired in the way of mid-decade data. I think it is quite clear that the Congress does not want to see a decennial census in 1985 and given the fact that there are problems, finding exactly what the scope of such an activity should be, and given the view of the administration at the moment relative to holding costs down. It was felt that $1.8 million would enable the Bureau to improve significantly its ability to utilize administrative records through statistical matching to improve the quality of the estimates that it now produces and to enable it to produce some additional detail in the way of minority statistics and some age detail. It certainly will not replicate the scope of the 1980 census.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. The other questions I have I will submit for response in the record.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WEICKER

In regards to the decennial census, were any of the planned census procedures eliminated or reduced to offset deficits?

The Bureau has successfully met the legal mandates of the census--the delivery of the apportionment counts to the President on December 31, 1980, and the delivery of the reapportionment counts to the states--on schedule by April 1, 1981. In order to accomplish this, some minor modifications were necessary, including the reduction or cancellation of some planned activities, such as: the check of the assignment of block numbers on the maps; balancing the counts keyed from the regional census centers; splitting the enumeration districts in the district offices to reflect the 1980 geo-political boundaries; completing a subsample of the nonhousehold source cases in some district offices; and loosening the rules for the telephone followup and long form edit. However, no program was entirely eliminated to offset deficits.

Since the collection and processing of the data for the additional 1.5 million housing units has increased, and will continue to increase the cost of the census as originally planned, the Bureau has implemented the following actions to increase the cost efficiency of the operations:

(a) Sample processing, originally scheduled to be completed in fiscal year 1981, will be extended into fiscal year 1982 by using a smaller staff for a longer period. This "stretch-out" of work was implemented to reduce the fiscal year 1981 expenditures without incurring significant delays in the completion of the work. Although the fiscal year 1981 expenditures will be reduced, the total costs for the processing activities will be increased by $15 million because the processing office space and staffs must be maintained for an additional 4 to 6 months; the other impact of the "stretch-out" is a delay in the availability of the sample data products.

(b) Place-of-Work (and Migration data) will be coded on a half sample--one-half of the questionnaires within each enumeration district. Place-of-Work data will still be coded to the block level but with reduced reliability.

(c) The publications which provide the final population counts and primary characteristics data for the local jurisdictions will be published (Advance Reports and Number of Inhabitants). However, the printing of all other publications planned for fiscal year 1981 will be postponed to fiscal year 1982. The tabulation plans and production schedule for all other reports will be analyzed and subject to modification; this may result in the elimination of some publications.

(d) The major program being used for evaluating the completeness of census coverage, the Post Enumeration Program (PEP), has been modified. Separate portions of the program necessary to measure undercounts and overcounts of persons in the census and completeness of coverage for housing units will be done. Additional coverage evaluation work planned for developing alternative estimates of census coverage (for example, use of administrative records for coverage evaluation or matching of additional sample cases to the census for the PEP) has been delayed until fiscal year 1982 and may be dropped altogether.

(e) The programs which identify 1980 census geography to special community and/or statistical areas, or to the 1970 geography, have been postponed to fiscal year 1982/fiscal year 1983. These programs include the identification of 1980 blocks and enumeration districts to the wards and to neighborhoods defined by the local governments.

Are there any future nonessential decennial census procedures to be reduced or eliminated--which procedures and how much could be saved?

The original program for the census included, upon completion of the processing of the apportionment and redistricting data, the production of data user products and the evaluation of programs which would be used in planning the 1990 census; none of these programs is considered "nonessential."

Consequently, the Bureau is currently reexamining the entire census program. It is possible that some data user products, including publications and/or geographic products, will be eliminated; data user services may be reduced at the national and regional levels. The processing of some census programs may be reduced or curtailed. It is not possible to estimate the cost impact of the proposed actions until a decision is made regarding the components of the revised census program.

Does the fiscal year 1982 budget address the needs for a mid-decade census? (NOTE: $1.8 million requested for this). If not, why not?

It is clear that neither the Administration nor the Congress wish to repeat the $1 billion plus 1980 census. The alternative chosen by the Administration for the mid-decade effort is the increase in the intercensal demographic estimates program which will provide data needed by Federal agencies and the Congress for policy planning and program administration.

Do you anticipate a need for planning funds if we are to proceed to a mid-decade census?

Planning funds would be required if the mid-decade effort were to take a form other than an expanded intercensal demographic estimates program.

Can there be an intercensal estimate to preclude the need for a mid-decade effort? If so, how and at what cost?

The improvements recommended for the intercensal demographic estimates program will provide data as indicated above. Some types of data for small areas that would be available from a census would not be provided. Estimated costs of the intercensal estimates improvements are $1.8 million for 1982 and $4 million annually for 1983 through 1986.

The Congress has addressed the Melcher Amendment for two successive years now. As I recall, this amendment prohibits a farm finance survey. Why do you feel this data base is so important? What are the ramifications of this language?

The farm finance survey has provided a series of data on farm credit, expenditures, income, and other financial aspects of farmers. It was first conducted in 1955 and has been conducted with each census of agriculture since then. The data are used by the Federal, State, and local governments, farm credit organizations, banks, and others to evaluate and change their programs to fill the financial and other credit needs of farmers. This survey provides data used by both the Department of Agriculture and the Commerce Department to construct the gross national product accounts and the personal income data series which is used to distribute about $50 billion of Federal funds. The data are also used to analyze the changes in financial, operating, and structural characteristics that directly impact upon U.S. farmers and farm families. Current economic data such as the level of income received by farmers, sources and amount of credit, methods of financing, capital equipment and operating expenses, and the parity price index for agriculture depend upon data from this survey.

The data are used in many policy and program decisions and to assess the financial condition of the farm sector by size, type and other structural characteristics of farms, evaluate effectiveness of commodity programs, evaluate adequacy of available credit for particular groups of farms, and assess the impact of tax policies on farmers.

The language currently prohibits the Bureau from conducting a farm finance survey following the 1982 and future agricultural censuses. Without this survey, decisions made by credit organizations, farm organizations and Federal, state, and local governments would be based on less reliable, outdated data. This may lead to inappropriate decisions that would have detrimental impacts upon U.S. farmers. In addition, some of the users including the Department of Agriculture, Farm Credit Administration, and the Federal Reserve System, have indicated that they would be required to conduct their own surveys to obtain this data which in the long run could impose more burden on farmers and be less reliable than the current farm finance survey.

What new initiatives are in your FY 1982 budget?

There are three new initiatives in the fiscal year 1982 budget. Under the Salaries and Expenses appropriation, additional funds are requested to cover workload increases in the foreign trade statistics area, and a proposal for development of statistical matching methods which will use computerized techniques to reduce the public reporting burden and enhance data quality. Under the Periodic Censuses and Programs appropriation, an increase is included to provide for the expanded use of administrative records to meet the need for improved estimates of the size, characteristics, and distribution of the population during the 1980's.

What programs were cut back by your March submission budget? How will this reduction of $6 million affect your abilities to fulfill your mission?

The ability of the Bureau to fulfill its mission will not be seriously affected by the $6 million reduction. The reductions identified below will minimally impact the programs involved.

Summary of Budget Reductions
(Dollar amounts in thousands)

	Perm. Pos.	Amount
Salaries and expenses		
Total, January submission	2,098	$63,880
Program reductions:		
Business statistics:		
Current wholesale trade Discontinuation of sales and inventory estimates for the nine geographic divisions and detailed kind of business, quarterly estimates of stocks and roastings of green coffee, and estimates of selected canned food stocks. Data on wholesale sales and inventories will be shown only at the national level for total, durable and nondurable industries.	-15	-96
Current service trade Discontinuation of monthly receipts for business services and engineering, architectural, and surveying services.	-4	-46
Foreign trade statistics:		
Trade monitoring Cancellation of requested program increase.	-17	-1,001
Imports Direct contact with U.S. Customs Service officials and importers for missing or defective quantity information will be discontinued, and errata changes for detailed commodity by country data will not be published or distributed to individual users.	-20	-284
Exports Export employee identification data used for improving the effectiveness of the export statistical program will not be collected.	-4	-75
Productivity measurement Cancellation of requested program increase.	-26	-1,554
Demographic surveys:		
Survey of income and program participation The editing staff which reviews the data collection results and approximately 20 percent of interviewer training will be reduced.	-10	-64
Operating expenses reductions:		
Travel	...	-158
Consulting	...	-9
Equipment	...	-10

	Perm. Pos.	Amount
Total, Salaries and expenses reductions..........	-96	-$3,297
Total, March submission..........................	2,002	60,583
Periodic censuses and programs		
Total, January submission........................	581	98,232
Program reductions:		
Economic censuses............................. Discontinuation of the Refile Survey used to provide industry classification for unclassified businesses.	...	-199
Census of governments......................... Elimination of details on selected individual jurisdictions in the reports on distribution of taxable property values and the ratio of sales prices to assessments.	...	-54
Census of agriculture......................... Data on agriculture services, such as veterinary and animal services, soil preparation and crop services, farm labor and management services, and landscape and horticultural services, will not be collected.	...	-319
Intercensal demographic estimates............. The frequency of the publication of population and per capita income estimates for cities and towns below the 50,000 population level will be reduced from every year to every two years.	...	-349
Decennial census.............................. Coordination and clerical support for the publication and data dissemination program will be reduced.	-15	-96
Periodic programs geographic support.......... The number of newly created areas for which geographic base files and related maps can be created will be reduced from 30 to 26.	-9	-136
Operating expenses reductions:		
Travel.......................................	...	-338
Consulting...................................	...	-25
Equipment....................................	...	-983
Total, Periodic censuses and programs reduction..	-24	-2,499
Total, March submission..........................	557	95,733
Total reductions.................................	-120	-5,796

To date how much has been spent on the 1980 decennial census?

As of February 28, 1981, obligations for the 1980 census total $930 million.

What is the expected total cost for all decennial census costs?

At this time the Bureau expects the total cost of the 1980 census will be $1,066 million--assuming the supplemental appropriation for fiscal year 1981 is approved. Possible additional requirements for fiscal year 1983 are now being examined.

What was the expected cost of the census as of April 1, 1980?

As of April 1, 1980, the Bureau had estimated total obligations of $1,008 million for the decennial census.

What benefits compared to the 1970 census, were derived from the large amounts spent for coverage improvements and data quality?

The success in enumerating five million more persons than expected is the payoff of the coverage improvement programs--particularly in light of the public's increasing skepticism in responding to inquiries from the government. It should be noted that preliminary data indicate the undercount of blacks has been reduced by 30 percent from the 1970 census. Significant gains are also expected for Asian-Pacific Islanders and American Indians. The improvement in coverage provides more accurate counts for use by Federal, State, and local officials in disbursing funds and in program planning.

Underestimate of 1.5 million housing units

What is the Bureau's explanation for the increased number of housing units over its estimates?

Early in the decennial census planning period, the need for an estimate of the total field enumeration workload became apparent. In 1975, an estimate was prepared of the number of housing units expected to exist in April of 1980. This estimate was made as follows:

(a) The April 1, 1970, published U.S. housing unit count; plus

(b) The estimate of the 1970 U.S. housing unit undercount; plus

(c) The Bureau's estimate of housing units completed and mobile homes placed in the United States May 1970 to July 1975; plus

(d) Projections of housing completions and mobile home placements for the United States to March 1980; plus

(e) National estimates of net adds due to conversions and mergers (1970 Components of Inventory Change experience); plus

(f) National estimates of conversions from nonresidential structures; plus

(g) National estimates of vacant mobile homes existing April 1970 and still housing units in 1980--(this was the definitional change); minus

(h) National estimate of housing unit losses during the decade, based on Annual Housing Survey and projected to 1980.

The above components were derived from national data sources. Some or all of the following reasons may account for the differences in the estimate and the final count.

(a) The estimate of 1970 undercount of housing units may have been understated.

(b) Estimates of new construction and mobile home placement may have been low.

(c) There may have been considerably more net additions from conversions/mergers in the 1970's than any other decade for which we have data.

(d) More conversions from nonresidential structures may have taken place.

(e) More 1970 vacant mobile homes may still be in use than we estimated.

(f) The Annual Housing Survey may have overestimated losses.

(g) Possible overenumeration in 1980; e.g., duplicate households or vacants that might not be housing units.

Where were the increased units, in the urban area or the suburban and rural areas?

The original housing unit estimates for budgeting purposes were made on a national basis, not by urban or rural areas. Also, the division of the 1980 housing unit counts by urban and rural areas has not yet been completed.

Were there any particular States in which this increase was most evident?

The analysis presented here is shown by regional office. The figures show that the increase occurred in almost all of the regional offices; however, it is especially prominent in the Atlanta, Dallas, Boston, Charlotte, Denver, Philadelphia, and Seattle regional offices.

State by Regional Office	Estimated Housing Units	Enumerated Housing Units	Difference
Boston	7,112.0	7,415.5	+303.5
Connecticut	1,174.8	1,159.0	-15.8
Maine	422.0	501.1	+79.1
Massachusetts	2,207.3	2,208.2	+0.9
New Hampshire	342.9	386.4	+43.5
New York	2,421.7	2,565.0	+143.3
Rhode Island	359.3	372.7	+13.4
Vermont	184.0	223.2	+39.2

State by Regional Office	Estimated Housing Units	Enumerated Housing Units	Difference
New York	6,155.4	5,906.2	-249.2
New Jersey	1,661.2	1,604.1	-57.1
New York	4,494.2	4,302.1	-192.1
Philadelphia	7,289.4	7,574.9	+285.5
Delaware/Maryland[1/]	1,763.6	1,809.6	+46.0
New Jersey	1,094.4	1,167.7	+73.3
Pennsylvania	4,431.4	4,597.6	+166.2
Detroit	7,616.4	7,697.8	+81.4
Michigan	3,490.3	3,589.8	+99.5
Ohio	4,126.1	4,108.0	-18.1
Chicago	7,863.5	7,778.2	-85.3
Illinois	4,429.1	4,317.1	-112.0
Indiana	2,110.5	2,091.8	-18.7
Kentucky	1,323.8	1,369.4	+45.6
Kansas City	7,544.4	7,552.5	+8.1
Iowa	1,157.3	1,131.1	-26.2
Kansas	970.3	954.7	-15.6
Minnesota	1,525.9	1,613.4	+87.5
Missouri	2,086.9	1,989.3	-97.6
Wisconsin	1,084.1	1,864.0	+60.0
Seattle	4,364.1	4,726.[illegible]	+361.8
Alaska	142.0	162.4	+20.4
Idaho	340.1	375.1	+35.0
Montana	311.8	328.5	+16.7
Nevada	288.5	339.6	+51.1
North Dakota	254.0	258.8	+4.8
Oregon	1,002.3	1,083.1	+80.8
Utah	459.0	490.0	+31.0
Washington	1,566.6	1,688.6	+122.0
Charlotte	6,179.0	6,470.0	+291.0
District of Columbia	293.5	276.7	-16.8
North Carolina	2,084.9	2,271.2	+186.3
South Carolina	1,081.3	1,153.5	+72.2
Virginia	1,990.8	2,020.8	+30.0
West Virginia	728.5	747.8	+19.3
Atlanta	8,918.2	9,617.6	+699.4
Alabama	1,404.9	1,466.7	+61.8
Florida	3,837.7	4,374.9	+537.2
Georgia	1,987.3	2,028.7	+41.4
Tennessee	1,688.3	1,747.3	+59.0

State by Regional Office	Estimated Housing Units	Enumerated Housing Units	Difference
Dallas	8,371.3	8,906.6	+535.3
Arkansas	878.4	898.2	+19.8
Louisiana	1,466.7	1,547.6	+80.9
Mississippi	881.0	911.6	+30.6
Texas	5,146.1	5,549.2	+403.1
Denver	4,810.9	5,137.4	+326.5
Arizona	979.8	1,110.0	+130.2
Colorado	1,091.8	1,193.8	+102.0
Nebraska	638.5	624.8	-13.7
New Mexico	444.7	506.3	+61.6
Oklahoma	1,218.0	1,237.0	+19.0
South Dakota	269.1	276.8	+7.7
Wyoming	169.0	188.6	+19.6
Los Angeles	9,541.9	9,614.0	+72.1
California	9,225.9	9,279.7	+53.8
Hawaii	315.9	334.3	+18.4
Total	85,760.5	88,396.9	+2,630.2

1/ The total is for Delaware and Maryland combined because the field estimate for the Dover, Delaware, regional office was for both states. For continuity, this approach was used.

For future censuses what could be done to eliminate or reduce the underestimate?

In order to develop better estimates for 1990, we intend to add an annual components of change supplement to the Annual Housing Survey. This comprehensive survey of inventory measurement will become an integral part of the current survey redesign and will permit us to make better estimation of all the components of inventory gains and losses throughout the decade.

Delayed district office closings

If a precensus review were performed, would it have reduced the delays in closing offices?

Probably not--but the Bureau can only speculate on the basis that the local review program was not a major cause in the delay of the district office closings.

What specific problems caused the Bureau to cancel the precensus review?

The original local review program included a precensus review and a post-census review of housing unit counts at the block (for blocked areas) or enumeration district (for unblocked areas) level. The specific problem that caused the Bureau to cancel the precensus review phase of the local review program was that the precensus address counts would not have reflected the large number of addresses added clerically to the master address registers as a result of operations conducted by the district offices between the beginning of February and Census Day (April 1).

The precensus address counts were to be generated from the computer address files. Addresses for most urban areas in the country were purchased as computer files. In order to determine the exact location of each address, down to the block level, the addresses were geographically coded by computer. Addresses that were not successfully coded had to be researched by field personnel and coded clerically in the district offices during the period mentioned above. The number of uncoded addresses was larger than anticipated and would not have been included in precensus address counts provided to local officials.

There were also other coverage improvement operations carried out in the district offices prior to Census Day that were to result in the clerical addition of addresses to the master address registers. A certain percentage of additions were anticipated from these sources. However, when the larger than expected number of uncoded addresses was added to the estimates of these anticipated additional addresses from the coverage improvement operation, it became clear to the Bureau that the precensus address counts generated from the computer files which were to be provided to local officials would be seriously deficient in many cases. The omission of all of these addresses would then have caused the local officials and the census district offices to expend tremendous resources in attempting to resolve possibly false discrepancies between their respective counts. It was also decided that more time would be needed in the postcensus phase to review and investigate problems raised by local officials. Therefore, the revised local review was scheduled to take place earlier than the originally planned postcensus phase. The schedule was revised to produce population and housing unit counts for local review after the basic enumeration was completed but before all the followup operations were finished.

On the whole, the Bureau feels the revised local review program permitted the district offices to utilize the available time and resources in a more efficient and effective manner, resulting in earlier closings than would have been achieved under the original program.

What could be done in future censuses to avoid the problem?

In order to provide a precensus review to the local areas, the Bureau must develop ways of improving the quality and coverage of the address lists which were either purchased from commercial vendors or developed in a canvassing operation conducted by the Bureau in 1979. Methods of geo-coding, i.e., assigning geo-political identification codes to specific addresses, must also be improved. The issue of improving the address list is one that will be given great attention by the Bureau in planning for 1990.

The other problem, which relates not to the cancellation of the precensus review but to the local review program in general, is the ability to provide local areas with block counts at key points of the census operations. If the Bureau accomplishes its objective of perfecting the address list and, therefore, produces a good precensus count this would serve as one set for review by the local jurisdictions. However, if the local review program for the 1990 census required two compilations of counts within the district offices, as in 1980, the ability to provide block counts at two points of the operation would be dependent upon the availability of sufficient computer capacity to transmit and control the counts from the regions. It is conceivable that technological strides during this decade will permit that kind of program data in two operations for the local review program in 1990. Of course, the Bureau will be examining all aspects of the program for ways in which to improve communication with the local officials and to increase local area input to the censuses.

Why does it take so long to tabulate and publish sample question data?

The Bureau has two mandates for the census: the delivery of the apportionment counts to the President by December 31 of the census year; and the delivery o the redistricting data to the states by April 1 of the following year. Therefore, priority is given to the processing of the 100 percent data, which are the units used for meeting the mandates.

Upon completion of the machine processing of the 100 percent data, the sample questionnaires then go through a series of clerical operations to code questions with write-in answers, such as place-of-work, American Indian tribe, ancestry, and industry and occupation. The sample questionnaires are then machine processed for tabulation.

The start of sample processing was delayed beyond the original target dates (October 1980) because of the delays in closing the district offices due to court injunctions and the enumeration of almost five million more persons than projected. Further delays will result from the "stretch-out" of the clerical and machine processing implemented to reduce the fiscal year 1981 expenditures.

Why couldn't these operations be expedited so that the data would be more timely and therefore more useful?

The sample processing will be delayed because there were insufficient funds to support a full staff. If the operations had been expedited, available funds would be expended prior to the time that a supplemental appropriation would be passed.

For future censuses, it may be possible that the start of sample processing can be expedited through improvements in electronic processing. The establishment of additional processing sites could also achieve some acceleration in the processing at some increase in cost. The issue of providing sample data on a more timely basis will be examined carefully when planning for the next census begins.

Unexpected Postal Service costs

How much were the unexpected costs?

Unexpected Postal Service costs were $3.5 million.

What were the costs for?

The unexpected costs were postage costs associated with the higher than anticipated return rate of census questionnaires.

Lower than expected enumerator productivity

Were incentive wages considered or used to increase productivity?

For the most part, actions to increase enumerator productivity were unnecessary and no incentives were offered. Our biggest problem with 1980 occurred in office operations being understaffed and underbudgeted.

What procedures, if any, were simplified to increase enumerator productivity?

Many changes in procedures were necessitated by the delayed receipt of materials (for example, some offices did not receive the precanvass address registers until the second week after the operation was scheduled to begin), or by attempts to limit spending. No procedural changes were made to increase productivity. A $50 bonus was authorized for prelist enumerators as an incentive during September 1979. The bonus was paid to enumerators meeting or exceeding the following goals per pay period: 600 listings for rural areas, 1,000 listings for urban areas.

What lessons, if any, were learned from the low productivity that could be applied for future censuses?

For perspective, it must be pointed out that the budget for 1980 was based on 95 percent of the followup enumeration to be completed by piece rate payments and only 5 percent on hourly payments. Since the rate per piece for 95 percent of the workload was fixed, the production rate does not have an impact on the direct enumerator payments for that part of the budget. If the production rates are low, however, the time of enumeration is lengthened and causes an increase in other costs, including crew leader payments. Piece rate payments were used for the majority of the enumeration to provide cost control as well as an incentive for increased enumerator production. Piece rates were established by time and motion studies during the pretests and dress rehearsals.

Increased hourly enumeration costs were not entirely the result of lower productivity. Each enumeration district (ED) was originally assigned a pay code to represent piece rate or hourly rate. As enumeration began, it became apparent that enumeration districts for which the enumerators were designated to be paid by piece rate should have been covered by the hourly pay plan due to the long distances between housing units or to other special circumstances.

Secondly, with piece rate enumeration the easiest cases (i.e., person is home during the daylight hours at first visit by enumerator) are the first ones completed and the enumerator is able to earn proportionately more money relative to the time expended to locate the housing unit and contact a household member for an interview. After the initial visit to each unit in the assignment area has been completed and the enumerator must make callbacks, she/he spends more time traveling between the nonresponse units, because the distance is longer, and these visits must often be made at early or late hours of the day in order to catch someone at home from work or school. Consequently, fewer forms are completed relative to the time expended to obtain the interview. Frequently, the original enumerator gets frustrated and quits, and an hourly wage must be paid before another enumerator will pick up the assignment, because she/he knows only the difficult cases remain and she/he wants compensation for the travel and callback time it will take to complete the interview.

A bonus for completing an assignment was tested during the Richmond dress rehearsal. However, the test was abandoned because of Fair Labor Standards Act (FLSA) procedures in effect at the time. The Bureau had requested an exemption from the minimum wage requirement provided under FLSA. This exemption had not been granted for the dress rehearsal. Therefore, a record of hours worked by piece rate enumerators was maintained and supplemental payment provided enumerators earning less than the minimum wage. In effect this defeated the bonus test since enumerators were guaranteed minimum wage regardless of production. While the bonus was paid in only a few instances, supplemental FLSA payments frequently were provided.

Rather than a "lesson learned," we did establish that low productivity results when a crew leader attempts to supervise as many as 11 to 13 enumerators. Budget constraints prevented the Bureau from lowering the number of enumerators per crew leader. However, crew leader duties increased as did the complexities of taking the 1980 census. Consequently, less time was available for direct enumerator supervision which results in lower productivity and increased costs.

Large number of unclassified addresses

What specifically is an unclassified address?

An unclassified address results when an enumerator has made several visits to an address and various supervisory reviews have been conducted, but too little information is learned about the housing unit to ascertain if the unit is occupied or vacant.

How many unclassified addresses were there in the 1980 census?

The total number of unclassified addresses requiring editing during the processing of the 1980 census is unavailable at this time, but we believe it is less than one-half of 1 percent of all addresses.

How were the population counts affected by the unclassified addresses? Did this affect the congressional apportionments?

The population count for each state was increased as a result of allocating population counts to unclassified units.

In addition to the units enumerated as unclassified, there were some households where the enumerator was able to determine that the unit was occupied, but (s)he was not able to obtain other information such as the number of persons or their characteristics. As household size and personal characteristics were allocated to these units, the computer maintained a count of the allocated persons in combination for both the unclassified units allocated as occupied and the occupied units where there was no indication of household size.

There were 761,652 persons who were added to 282,998 housing units by this process. The average household size in these units is 2.69 persons as compared to the national average household size of 2.75 persons in the 1980 census.

If these 761,652 persons were removed from the census counts, the apportionment for Florida and Indiana would change; that is relative to the apportionment based on 1980 census figures, Florida would lose one seat which would be gained by Indiana. The apportionment for all other states would remain unchanged.

We are currently in the process of tabulating separately the data for the two categories of housing units with allocated persons. When that tabulation is completed, we can then simulate how the unclassified addresses affected congressional apportionment.

w were persons "residing" in unclassified addresses added to the unts?

ring the processing phase, records were maintained on the occupancy atus of all housing units. For occupied units, records also inuded the household size and characteristics of persons enumerated. en an unclassified housing unit was encountered, a reference was de to the housing unit processed just prior to the unclassified it in order to allocate occupancy status. If occupied status was llocated to the unclassified housing unit, the reference unit was lso used to allocate household size and characteristics for those ersons. This procedure usually resulted in the use of a neighboring ousing unit for the allocation of data to an unclassified unit.

n summary, units initially enumerated as unclassified were allocated y this method as either vacant or occupied; household size and haracteristics of persons in the occupied units were then allocated, esulting in an increased population total.

n what ways did these addresses increase the cost of the census? nd by how much?

he increased cost of processing these addresses was not significant; owever, since they required so many additional visits by enumerators nd supervisory personnel, they did add to the field costs. An stimate of these costs is not available separately, as they were bsorbed into the field followup budget.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Last year the Committee directed that the in-kind benefits be included in income statistics. The Committee was advised that 14 positions and $295,000 was being devoted to this project.

Where is this project reflected in the justification?

This project is reflected in line items for the Current Population Survey (CPS), Current Demographic Reports, and Survey of Income and Program Participation (SIPP).

What is the status of that project?

Data was collected in the March 1980 CPS; a preliminary report of the findings has been published; and a more detailed report is scheduled for release in October 1981.

Will that level continue in 1982?

Yes, for 1982, but it is expected that in the future the focus will shift to SIPP, which will permit the collection of much more complete information.

Several years ago this Subcommittee approved funds for the computerized Textile Import Monitoring System (TIMS). We are advised that procurement of the computer is imminent.

The Office of Textiles will have a priority on the computer but Census expects to use it for all of the foreign trade data. During periods of textile negotiations, etc., how will Census process its foreign trade data if the Office of Textiles is using the machine?

The requirement for simultaneous access to the TIMS computer by the Office of Textiles and Apparel and the Census Bureau was included in the specifications advertised to the industry and was part of the benchmark testing and evaluation. All computer systems which passed the benchmark demonstrated the ability for Census to process and update both import and export data while permitting Office of Textiles and Apparel to access textile data, perform analysis, and prepare printed reports concurrently. Concurrent processing is a feature of state of the art data base computer systems such as the TIMS computer.

We understand that there is a plan to match textile import shipments against foreign country authorizations. This will necessitate a high degree of cooperation from the U.S. Customs Service. However, Census is budgeting for less contact with Customs in connection with its import statistics program. Are we going two different ways at the same time?

The proposal to match textile import shipments against foreign country authorizations would require notification of an export shipment from the agreement country to the Office of Textiles and Apparel, which would prepare the data for the TIMS computer. Customs is not involved until the shipment is landed and declared in the United States, and would then notify the Office of Textiles and Apparel, as they do at present. Census is not presently involved in this process, although it has been discussed as a possible future application, through utilization of the statistical copy of the import entry forms in cooperation with Customs.

A planned reduction in the import statistics program budget is not predicated on less contact with Customs but is a result of proposals to reduce processing costs by imputing quantity and weight on low-value documents where they are not reported or are out of range for non-textile shipments. Textile import documents will continue to be screened and reviewed as needed, or referred to Customs for further information.

Included in the budget request is $1.554 million for a new activity, productivity measurement.

Is the productivity measurement activity expected to be a continuing function?

If so, what are the costs of this project estimated to be for the next several years?

What is the effect of not funding this request?

This activity was excluded from the revised budget submitted in March.

There are no funds requested for the Mid-Decade Census required by P.L. 94-521. Funds were also excluded for this census from the Bureau's budget for 1981. During the 1981 appropriation hearings, the Bureau commented that OMB suggested that the need for a Mid-Decade Census could be eliminated by an improved demographic estimates program, in combination with the existing current surveys and special surveys which could be taken as needed. The Bureau also said that the Office of Federal Statistical Policy and Standards (OFSPS) and the Bureau were studying the adequacies of this alternative, as well as investigating other alternatives.

Has the Census Bureau/OFSPS study been completed? If it has, what are the alternatives to a complete census?

Yes. The alternatives to a complete census proposed in the Census/OFSPS study were expanded use of administrative records both by the Bureau of the Census and the Bureau of Economic Analysis in order to improve the quality and scope of intercensal estimates along with the conduct of a large-scale sample survey in 1985. In addition, the plan proposed a number of additional activities, also directed towards improving the utility of the survey and estimates data. Included were programs to expand the Federal/State Cooperative Program, to improve the local employment and sales data from the Bureau of the Census, to improve the state economic accounts, to provide regular socioeconomic profiles of counties, and for the publication of quarterly state economic developments. These programs involve activities of both the Census Bureau and the Bureau of Economic Analysis.

Do the alternatives include a special survey(s)? If so, at what cost?

Yes. The alternatives include a special survey, the cost of which would have been approximately $56 million through fiscal year 1985. Additional funding would have been required to process the data collected.

Do the alternatives include greater reliance on other government agencies? If so, at what cost?

The alternatives would involve greater reliance on other agencies, particularly as noted above, the Bureau of Economic Analysis (BEA). The cost of the BEA part of the program was approximately three quarters of a million dollars in fiscal year 1982. In addition to the direct BEA activity, OFSPS proposed to aid other Federal agencies in a research effort to provide local estimates for socioeconomic activities (other than population) using the large sample survey as a benchmark.

Do the alternatives consider greater reliance on state or local governments? If yes, at what cost?

The alternatives did involve greater reliance on state and local governments but only in terms of their effective utilization of the data.

If there is no funding for the Mid-Decade Census, will the Secretary be able to satisfy the legislative requirement that he report by April 1, 1982, on the subjects proposed to be included and the types of information to be compiled in the 1985 Mid-Decade Census?

If the program proposed in the 1982 budget is approved by the Congress, a mid-decade census will not be conducted. The Secretary, in accordance with the legislative requirement, will advise the Congress on the progress of the activities for which funds are made available.

Is the Bureau satisfied with the current program of intercensal population estimates? Or simply stated, can we do without a Mid-Decade Census of population?

The Bureau is not fully satisfied with its current program of intercensal estimates and has requested $1.8 million in fiscal year 1982 to improve its estimates. The question "Can we do without a mid-decade census of population?" is not necessarily related to estimates. The estimates program will not provide data on all of the subject matter that would be available from a complete census of population.

The proposed appropriation language for Periodic Censuses and Programs requests deletion of restriction inserted by the Congress with regard to the Agricultural Census.

What is the impact of those restrictions on the 1982 Census of Agriculture?

The restrictions inserted by the Congress eliminate the farm finance survey and the agriculture services censuses from the 1982 and future censuses of agriculture. This will eliminate two data series and users will be required to rely upon other fragmentary and less comprehensive information or to establish additional surveys to obtain needed data. Data from both surveys are used in many of the economic data series such as the Department of Agriculture farm income accounts and the Department of Commerce gross national products accounts. Of most importance is the farm finance survey which is also used directly by the Federal Reserve System and various parts of the Farm Credit Administration, commercial banks, and other financial institutions, as well as a number of Federal and state agencies in monitoring levels of indebtedness and for developing and evaluating credit programs for farmers.

Mayor C. Cooper Tedder has told me of his efforts to have Florence, South Carolina designated as a Standard Metropolitan Statistical Area. How is the designation of Florence as a SMSA progressing and when can the Mayor expect the city to be designated?

Data examined from the 1980 census, so far, indicate that the area meets the criteria for such designation. The Bureau expects to complete work on verification of boundaries in that area about mid-May, and the final determination information will be submitted to the Office of Management and Budget (OMB). Data for all of the states are being furnished for this purpose on a flow basis. We expect to complete this process in time for OMB to announce the designations in June.

SUPPLEMENTAL REQUEST

Senator WEICKER. The supplemental you are asking for is what?

Mr. LEVINE. $24.2 million, Mr. Chairman.

Senator WEICKER. That is needed by June 1?

Mr. LEVINE. We need an indication that the Congress is in favor of this by that time.

Senator WEICKER. What choice do we really have in a situation like that?

Mr. LEVINE. I guess the Congress has the choice of not passing the supplemental. We would hope the Congress would look favorably on this.

Senator WEICKER. What you are saying is that should you not get the money—it isn't that the work that has been done up to this point is for naught, but it is a question of getting the final figures out.

Mr. LEVINE. There would be a serious delay in producing data, there would be additional costs to the Congress and to the Bureau in terms of having to stop, lay off the 4,000 people and then at some point restart, rehire, and retrain. We would lose productivity, we would lose time, and a good deal of money.

Senator WEICKER. Since OMB has gone ahead with the reprograming, will you have to reprogram funds into this from other areas?

Mr. LEVINE. No; the only thing that OMB has indicated was that within our mandate, within our deficit, they have directed that we take the remaining $9.1 million of funds appropriated by the Congress for litigation purposes and move it into the operating budget which results in a deficit of $22.8, instead of the $33 million that we originally talked about, which means we will not be able to respond to any of the court-ordered actions.

Senator WEICKER. If there are, you will have to come back for a supplemental?

Mr. LEVINE. We would certainly have to raise that within the Department, within OMB and see how they wish to handle it.

Senator WEICKER. I must confess for a conservative administration there are some very unconservative fiscal practices going on in this budget insofar as contingent liabilities are concerned.

The remaining questions will be submitted for response in the record.

Mr. LEVINE. We will be happy to answer them, Mr. Chairman. Thank you very much.

Senator WEICKER. The committee will stand in recess, probably for about 20 minutes. So for the time being, let's say we will reconvene at the hour of, it could be a little bit longer by the time the vote takes place—a quarter to the hour.

[A brief recess was taken.]

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

STATEMENT OF DALE HATFIELD, ACTING ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION

ACCOMPANIED BY:
STANLEY COHN, DEPUTY ADMINISTRATOR FOR OPERATIONS
DENNIS CONNORS, BUDGET OFFICER
DONALD JANSKY, ASSOCIATE ADMINISTRATOR FOR FEDERAL SYSTEMS AND SPECTRUM MANAGEMENT
JOHN O'NEILL, ACTING ASSOCIATE ADMINISTRATOR FOR TELECOMMUNICATIONS APPLICATIONS
WILLIAM UTLAUT, ASSOCIATE ADMINISTRATOR FOR TELECOMMUNICATIONS TECHNOLOGY
NANCY A. RICHARDS, DIRECTOR, OFFICE OF BUDGET

BUDGET REQUEST

Senator WEICKER. The committee will resume its deliberations. Our next request is that of the National Telecommunications and Information Administration. The amount requested is $16,467,000, and provides for 239 permanent positions.

Appearing on behalf of this request is Dale Hatfield, Acting Assistant Secretary for Communications and Information and I will allow him to introduce those who accompany him. We are glad to hear your statement regarding the request.

Mr. HATFIELD. Thank you very much. I have with me John O'Neill, Dennis Connors, Stan Cohn, Don Jansky, and Bill Utlaut.

Thank you for the opportunity to appear before you to discuss the administration's proposals for the 1981 and 1982 budgets of the National Telecommunications and Information Administration—NTIA.

President Reagan's outline for economic recovery includes plans to reduce Federal expenditures as one of its four cornerstones. I am asking your support today for measures we have suggested which would reduce the 1981 request previously submitted by $26 million, to $17 million; and we propose to reduce the 1982 amount by $23 million to a new total of $16.5 million. This revised budget total for 1982 is 58 percent below the previous administration's budget for 1982.

Changes like these will be necessary if we are to slow the growth of Government to the degree the President has pledged. I think that you will find, however, that the budget still supports the essential NTIA roles in developing policies for broadcasting and common carrier; improving the use of telecommunications and information systems; and in managing the scarce spectrum resource.

PROPOSED REDUCTIONS

The principal thrust of NTIA's proposed reductions is the rescission of the public telecommunications facilities grant program. As the subcommittee is aware, NTIA's facilities program is one of a number of special purpose grant and aid programs proposed for elimination by the President. This cutback is part of a general retrenchment affecting special purpose grant programs, which is necessary to achieve more control over Federal expenditures. This grant program was established in 1962 at a time when there was very little public broadcasting. Since then, over $190 million in grants have been issued, and access to public broadcasting has been greatly extended. At present, nearly 93 percent of the population have access to public television and 70 percent can receive public radio, thus one of the program's main goals has been essentially met. In a period which requires such great reductions in Federal spending, we believe that neither permanent Federal support for purchase of broadcasting equipment nor funds for planning or further extension of coverage seems appropriate.

In addition, NTIA proposes to reduce its satellite applications program, which is designed to stimulate commercial satellite carriers to provide cost-effective services to widely dispersed and low volume public service users. Work in the satellite applications program on both the international and technical support missions assigned to NTIA under the Civil Space Policy Presidential Directive—PD-42—would be phased out after fiscal year 1981. Encouragement of U.S. private industry and professional organizations to pursue these initiatives have already begun and will continue in fiscal year 1981 and thereafter.

NTIA also proposes reductions in expenditures for travel, equipment purchases, and consulting services in line with the President's efforts to control overhead in the Federal Government.

However, NTIA will continue to develop policies aimed at creating an improved regulatory framework for television, radio, cable, and mobile radio; and assure that users receive the least cost and broadest range of common carrier services. We will also develop policies for the use of nonduplicative telecommunications and information technologies.

In the important area of managing the spectrum, we will continue to insure that the Government's use of the spectrum is effective, efficient, equitable, and responsive to national and international requirements. Included within spectrum activity is the assignment of radio frequencies to Federal agencies, reducing present and projected radio interference situations between various Federal agencies, and developing Government policies for international negotiations on spectrum allocations and regulation.

These are the highlights of NTIA's budget. My colleagues and I will be happy to respond to your questions today.

PUBLIC TELECOMMUNICATIONS FACILITIES GRANT RESCISSION

Senator WEICKER. The rescission of $25.7 million relates to the facilities grants for public telecommunications. What do you think of commercial television?

Mr. HATFIELD. As a public official, I am very cautious about commenting on specific television programs, or programs of that nature. I am hopeful and very confident in fact, that the new technologies that are coming on-stream will help people who want to see different sorts of programing. Given these opportunities, of course—with satellites and cable—receiving programing and developing cultural programing and so forth will be easier.

Senator WEICKER. Let me say this: As far as I am concerned, overall, commercial television is awful. I think most of the American public will come close to agreeing to that analysis. If there has been any thrust in elevating taste using TV as an educational device, certainly it has been public television. I think we both agree that the grants that have been given out have been enormously successful.

That certainly can't be the reason for the rescission; that it hasn't done the job. It has done the job. We both agree on that.

Mr. HATFIELD. That is right. Now with the need to curtail budgets, we are saying the job has been completed.

Senator WEICKER. The second thing is the philosophy of the administration that when we cut loose these programs they will be handled by the private sector. I am not so sure I want the private sector to handle this. One of the reasons why public broadcasting is successful is because of the way private enterprise handles their sector. I would like to know if the reason for these cuts is that this is some broad economic game plan? I gather the essence of your comment is you say that changes are in the Government. Is that the reason for this cut?

Mr. HATFIELD. Yes; cutting these specialized grant programs, such as the facilities program, which the administration feels has largely completed what it started out to accomplish.

PUBLIC TELECOMMUNICATIONS FACILITIES COVERAGE

Senator WEICKER. Why is it completed? Obviously it still is not having the impact that it should have on commercial television because commercial television gets worse and worse. If the job is done, or it had an impact, I would say, the job is completed. I don't believe the job is completed. TV is the most wasted resource that we have in this country.

Mr. HATFIELD. It is completed in the sense that once you make it available to 95 percent of the country, the additional increments, 1 more percent coverage by stations gets very, very expensive because you get to the point of diminishing returns. It is like in telephone service, once you get to 95 or 97 percent, it gets so expensive to reach the last few that you are forced to stop. I think what we are saying is we are not now at approximately that level, around the 90 to 95 percent.

Senator WEICKER. I understand the statistics. Sixty percent receive public radio and 90 percent who are able to receive public television, many in UHF areas, like Washington, cannot receive adequate reception.

Mr. HATFIELD. We are working very hard with the Commission on the UHF comparability problem so that you can improve reception on UHF. I think there has been quite a bit of progress made along those lines.

Senator WEICKER. Even though one of the budgets is not under the aegis of this committee, I obviously have to take into account this reduction of 25 percent in public broadcasting. It seems to me that this is the only way, again using the philosophy of the administration, that of competition, that we can achieve the better result, rather than by Government fiat. It would seem to me that here we have a situation where the networks are very much in control of what the American people see except for public television. That is the only element of competition.

Now that element is going to be further reduced, which only means that there will be no incentive to improve the quality of what the American public sees. Maybe you don't care to comment on that quality. But I have. I don't know anybody in this country—let me tell you something. I just see red in terms of the waste of this resource. Gentlemen, what that can do for the children of this Nation, for so many groups of our society, for the Nation as a whole. My God, what is going on? I am not one of these people who likes to sit there and listen to chamber music and all sorts of oddball things. [Laughter.]

You know, I enjoy good opera, the symphony, ballet, and even that is probably considered oddball enough. Truly, I sit there at night after I get home, and look for something that is going to be on for myself and my children on television; it is just not there. It is not there. I suspect this is the reason why there is this preoccupation with the news. The news at least achieves some level of intellectual height. Certainly nothing else does.

Mr. HATFIELD. I would just suggest that I think with satellite distribution of signals now, I believe it is in 20 million homes which have cable and that they now have access to an awful lot of cultural programing delivered by satellite. It is growing fairly rapidly. I think that is putting a sort of competitive pressure on the networks. I think that will deliver the sort of diversity that has been traditionally delivered by public broadcasting. There are also individual video cassettes that are becoming very popular, as well, which can also provide many of the same types of cultural video entertainment.

PUBLIC TELECOMMUNICATIONS FACILITIES 5-YEAR PLAN

Senator WEICKER. I have in my hands a U.S. Department of Commerce long-range plan for public telecommunications facilities. Under the summary interpretation of findings, here it states that the minimum needs of the public telecommunications can be met by appropriations between $35 and $40 million per year, 5-year period. What is the 5-year period?

Mr. HATFIELD. 1980 through 1984.

Senator WEICKER. This is a rather weighty document. I have not had a chance to read it. But this is the Department of Commerce itself.

Mr. HATFIELD. That plan has not been approved by the Department of Commerce.

Senator WEICKER. This is a draft?

Mr. HATFIELD. Yes; that is an early draft.

Senator WEICKER. Before the politicians got hold of it? It is probably the most honest efforts to come forward.

[Laughter.]

Mr. HATFIELD. I believe there is a later draft than that one.

Senator WEICKER. Who wrote the later draft?

Mr. HATFIELD. The same people. That new draft has been forwarded to the Department.

Senator WEICKER. What does the later draft say in this area that I just discussed?

Mr. HATFIELD. My recollection is that to complete the public TV to about 95 percent and radio to 80 percent would require funding on the order of about $20 million a year, about $13 million for television, and about $7 million for radio. But you can see how expensive it is to extend above the current, let's say the 90–92 percent level. It gets very expensive to get those last few percentages.

Senator WEICKER. We will just have to see.

MEDIA CONCENTRATION

What efforts have you undertaken or do you plan to undertake in dealing with the issue of media concentration?

Mr. HATFIELD. Our principal efforts in media concentration have been to open up new outlets for minorities and other groups. One of the reasons that there is concentration in some parts of the industry is because of the scarcity of the spectrum, which only permits a limited number of people to broadcast for example. So one of our strong efforts has been to increase the availability of channels for other people and therefore spread out the availability of channels to many groups and decrease the concentration through that means.

Concentration in the broadcast industry has not been increasing significantly over the past 10 years. While radio multiple ownership increased slightly—3.5 percent—the level of multiple ownership was low to begin with—20–25 percent. Television group ownership actually fell over the period from 1970–78, from 64.5 to 59.7 percent. Newspaper-broadcast crossownership has also declined in recent years. In view of this fact, NTIA believes that the goal of diversity is better promoted by increasing competition rather than looking toward further regulation of ownership that already exists. Thus, NTIA has promoted policies that open up the marketplace to new services and enhanced competition. For example, UHF television has for years suffered a technical handicap relative to VHF television. This disadvantage serves to reduce opportunities for more competition, that is, a fourth commercial television network. NTIA has provided the FCC with detailed studies analyzing the UHF problems and we have made recommendations with regard to solutions. We have also strongly supported the establishment of the proposed low power television service. Low power television offers the opportunity for added diversity in urban areas and important first services in rural areas. New facilities almost always result in less concentration, particularly in the case of UHF where the Commission's existing multiple and crossownership rules are fully applicable.

Senator WEICKER. That is concentration as it is defined by your definition, not as a majority. What about concentration in a few corporate hands? Does that bother you at all?

Mr. HATFIELD. We testified last year before the Small Business Subcommittee which was looking at concentration in the broadcast area. Here again my feeling is that direct broadcast satellite and some of these new technologies will provide many competitive opportunities. The problem is worrying about the diversity of voices that are here in the home. I think because of the technology, we are going in the right direction to provide that.

Senator WEICKER. I will tell you, I challenge you on that statement and I might add absent direct contradiction to my own investments because I see these corporations snapping up everything. Newspapers are snapping up radio stations; television stations, the same corporations, are now snapping up cable TV. I don't see diversity. As a matter of fact, at one time I said cable operators were pretty much off by themselves. They are getting swept into the media conglomerates. You are seeing the prices being paid for that right now.

Mr. HATFIELD. Of course. To build cable systems requires substantially large capital investments. That usually means large firms with large amounts of capability to be able to do it. It is a two-edged sword.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I will have further questions which I will submit to you for the record.

Thank you very much, Mr. Hatfield.

Mr. HATFIELD. Thank you very much.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WEICKER

FY 1980 OBJECTIVES AND ACCOMPLISHMENTS

NTIA's budget estimates do not highlight prior year accomplishments with prior year objectives. Will you provide for the record a list which would match the fiscal year 1980 objectives contained in that year's budget against actual accomplishments and further set forth the specific objectives for 1982, labeled as such, for each program of each activity.

Activity: Policies for the Development of Telecommunications Industries

Subactivity: Broadcasting, Cable & Special Services

FY 1980 Objectives:

To develop plans and policies that would: (1) increase diversity of ownership and service by television, radio, and cable television by encouraging the entry of new outlets, modifications in the operation of existing outlets, and the provision of financial and other incentives for the wider participation of minority groups; (2) allow greater shared use of scarce radio spectrum resources in the broadcast and mobile services based on sound economic and technical analysis in order to expand the total level of service within overall spectrum constraints.

FY 1980 Accomplishments:

In this area, NTIA worked during 1980 to promote greater diversity of broadcasting service choices, by recommending adoption by the Federal Communications Commission (FCC) of improved and modernized radio frequency management techniques. Our nine kiloHertz (kHz) initiative, for example, urged a reduction in the frequency spacing among AM radio channels from the present 10 kHz to 9 kHz in order to greatly expand the number of stations possible. Nine kiloHertz spacing is used throughout the world, except in North and South America. We submitted detailed and extensive recommendations to the FCC on this proposal, as well as on ways to achieve more efficient use of the FM radio frequency band and to streamline traditional station assignment procedures. Similar efforts were devoted to expediting the emergence of sophisticated, high capacity, "cellular" mobile radio services. Recommendations and technical studies regarding changes in current Multipoint Distribution Service (MDS) policies, and the feasibility and desirability of permitting extensive low power television station operations, were submitted to the FCC. We also filed comments with State agencies urging a reduction of unnecessary cable television regulations. We submitted recommendations to the FCC that it consider reducing the orbital arc allotted to U.S. domestic satellite operations from 4 to 3 degrees.

Based in major part on NTIA's input and initiatives, the FCC in 1980 proposed greatly increasing the number of AM and FM radio stations possible within the present bandwidth allocations. Under our nine kiloHertz plan, for example, as many as 1,500 new AM radio stations may eventually be added nationwide, thus expanding the range of listening choices available to the public, while also affording important new ownership opportunities for minorities and women.

FY 1982 Objectives:

Formulate and advocate regulatory, legislative, and institutional reforms to the FCC, Congress, and industry to: (1) increase the number of outlets and diversity of broadcast and related services, and (2) promote the ownership and viable operation by minorities of broadcast stations.

Subactivity: Domestic Common Carrier

FY 1980 Objectives:

(1) to permit fair competition to grow among common carrier firms, some of which can cross-subsidize their services, without threatening the continuation of universal service, and (2) to reduce unduly burdensome regulation in line with the President's policies on regulated industries.

FY 1980 Accomplishments:

NTIA participated actively and extensively in legislative and regulatory efforts to deregulate domestic communications common carrier services that are now effectively competitive. We proposed extensive changes in current FCC rules that would, in essence, eliminate economic regulation of nondominant carriers, and allow dominant carriers to participate in competitive markets on an unregulated basis, through the establishment of a fully separate subsidiary. An improved system of access charges for local telephone facilities usage was put forward, together with proposed changes in current depreciation and accounting regulations governing telephone terminal equipment. Together with the staff of the House and Senate Communications Subcommittees, NTIA worked on developing comprehensive domestic common carrier legislation. Such legislation (H.R. 6121, 96th Congress) was favorably reported by the House Committee on Interstate and Foreign Commerce in 1980.

NTIA submitted detailed and extensive engineering and policy recommendations on how best to authorize a new, nationwide electronic message service, as proposed by the Xerox Corporation. In December, 1980, the FCC authorized the new nationwide electronic message service we had urged. The FCC also resolved the issues presented in the "Second Computer Inquiry," which involved telephone companies' provision of certain data processing or "enhanced telecommunications services." In important regards, the FCC's decision reflected NTIA's views and recommendations.

NTIA continued to monitor U.S. Postal Service programs aimed at developing "electronic mail" services, to insure their consistency with Presidential limitations on such offerings, which limitations were designed to foster full and fair competition with the private sector. We submitted extensive comments regarding proposals by the Board of Governors of the Federal Reserve System and the Federal Home Loan Bank Board to develop electronic funds transfer and similar "electronic banking" systems. NTIA also chaired, together with the Treasury Department, an Executive Branch task force that is studying the appropriate role of the Federal Government in these emerging financial services areas.

FY 1982 Objectives:

Formulate and advocate regulatory, legislative, and institutional reform to the FCC, Congress, and industry to promote competition and deregulation where feasible, and to ensure the universal availability of basic telecommunications services.

Subactivity: International Telecommunications Policy

FY 1980 Objectives:

(1) to develop and advocate U.S. telecommunications policies and positions within international forums and to develop policies affecting U.S. industrial and governmental participation in the international environment; and (2) to carry out, in conjunction with other Executive Branch agencies, the President's oversight role of U.S. participation in international organizations on telecommunications.

FY 1980 Accomplishments:

In respect of international telecommunications, NTIA urged the FCC to eliminate current restrictions on the resale and sharing of international circuits and to adopt new policies to allow the Communications Satellite Corporation (COMSAT) to participate fairly in retail services markets. These policies, if adopted, could further more efficient and effective international telecommunications services, so vital to expanded world trade. At present, telecommunications and information goods and services constitute the third largest element in our world trade. NTIA participated in successful Executive Branch efforts to open the Japanese telephone equipment market to U.S. firms, and also to reduce non-tariff barriers to expanded information services sales by American data processing companies in Japan. NTIA also played a major role in the ongoing international consultative process that is planning an appropriate blend of satellite and submarine cable facilities for the North Atlantic basin.

NTIA assisted the British Department of Industry in the formation of procompetitive policies and legislation by the British government. A bill now before Parliament will open telephone equipment sales in the U.K. to private corporations and will allow the introduction of some transmission services by common carriers on a competitive basis.

FY 1982 Objectives:

Formulate and advocate regulatory, legislative and institutional reforms to the FCC, Congress, industry and international bodies to promote the United States position in international bodies.

Activity: Efficient Use of Telecommunications and Information Systems

Subactivity: Telecommunications Applications

FY 1980 Objectives:

(1) develop and implement policies, plans, system technical and performance standards and compliance criteria to improve the efficiency and effectiveness of Federal telecommunications and information systems; (2) develop plans and policies and provide technical assistance aimed at fostering improved telecommunications services to specialized publics and for specialized needs by state and local governments, other public service agencies and by the commercial sector; (3) aggregate public service needs and markets appropriate for satellite delivery in order to lower costs, improve quality and expand the availability of public services to all categories.

FY 1980 Accomplishments:

To develop an effective Federal telecommunications planning process, a reliable and up to date source of information is essential. The only existing full-scale telecommunications information collecting system is part of OMB's Circular A-11 budget reporting process (Exhibits 43B-D). NTIA completed a comprehensive evaluation of that process and will make recommendations to OMB on measures to improve the accuracy and utility of the information. NTIA also prepared position papers for OMB on planning and telecommunications for implementation of what later became the Paperwork Reduction Act.

NTIA has also drafted a proposed Federal Standard that defines the performance standards for data communications systems so that those standards are oriented to the needs -- and the level of expertise -- of the average system user and are not tied to any specific data communications system. To date, such a standard has been adopted as an interim standard by the General Services Administration. It is expected that the standard will be adopted as an industry standard as well in the near future.

NTIA awarded $1.18 million in grants to stimulate further public service use of satellite communications. In accordance with the President Carter's Civil Space Policy directives, NTIA sought to aggregate small volume public service satellite users, with initial emphasis on educational service requirements and applications. As lead agency for the White House Rural Telecommunications Program, NTIA made recommendations to the FCC to expand the cable television and other communications services options available in rural areas.

Recommendations were made to the FCC concerning the development of standards for broadcast "teletext" services. NTIA also urged the FCC not to delay needlessly the approval of proposed direct broadcast satellite operations.

FY 1982 Objectives:

(1) stimulate the aggregation of dispersed, low-volume public service satellite users, both Federal and non-Federal, in order

that they can use unsubsidized commercially available satellite services; (2) conduct technical analyses to encourage the evolution of new satellite communications technologies and contribute to domestic direct broadcast satellite policy and to the preparations for the 1983 Regional Administrative Radio Conference (RARC); (3) make recommendations to improve policy guidance for telecommunications system-procuring agencies; (4) develop and gain acceptance of Federal Standards (FS) to determine methods of specifying and measuring data communications performance; and (5) coordinate Federal grant programs involving telecommunications assistance to states and assist states in reducing duplicative, fragmented and over-regulated telecommunications systems.

Subactivity: Information Technology and Policy

FY 1980 Objectives:

(1) identify structural, economic and regulatory problems created by increasing domestic and international convergency of telecommunications and information industries and develop policy solutions in selected areas aimed at reducing barriers to new information services; (2) draft legislation and encourage the adoption of national fair information practices policies enunciated by the Administration; and (3) undertake the tasks necessary to fulfill the mission of the Secretary of Commerce, assigned to NTIA, regarding telecommunications protection.

FY 1980 Accomplishments:

Together with the Department of State, NTIA participated in deliberations of the Organization for Economic Corporation and Development (OECD) concerning privacy standards applicable to international, transborder data flows. NTIA played a leading role in negotiating OECD voluntary guidelines on personal privacy protection and the free flow of information. Some twenty countries including the United States already have accepted these guidelines.

NTIA served as the lead Executive Branch agency for important elements of the President's Privacy Initiative in 1980. This program seeks the adoption of reasonable and appropriate safeguards on the use of and access to computerized and other information data banks. Legislation concerning standards applicable to credit, insurance, medical, and banking records, among other things, was proposed. The Ninety-Sixth Congress did enact legislation restricting police access to reporters' notes and records.

NTIA in 1980 released a comprehensive report concerning Government cryptographic research and applications policies. This report recommends a review of current restrictions to insure that they do not needlessly impair research in the computer and data processing fields.

FY 1982 Objectives:

(1) identify unclassified information which would be valuable to foreign adversaries and assure that the means are available for the protection of such information; (2) encourage the develop-

ment of competitive information services and information technologies; (3) develop policies regarding the entry of the Federal Government into information services markets; (4) work with the FCC and Common Carriers to adopt systems to protect the privacy of individual communications; (5) develop and encourage the adoption of a national policy for the protection of the privacy of recorded information about individuals held by public and private institutions; and (6) develop policies concerning the transfer of information across national boundaries.

Activity: Management of Telecommunications Resources

Subactivity: Spectrum Policy

FY 1980 Objectives:

(1) to issue and revise allocations, procedures, rules and regulations governing Federal use of the radio spectrum with the advice of the Interdepartment Radio Advisory Committee (IRAC) and in conjunction with the FCC, to improve overall national management of the spectrum; (2) to participate in International Spectrum Management including the 1979 World Administrative Radio Conference and direct implementation of the resulting treaty obligations of that Conference in the Federal sector and preparation of U.S. positions for the 1982 ITU Plenipotentiary and the 1983 Regional Broadcasting Conferences; and (3) to coordinate various Federal agencies programs concerning the effects of nonionizing radiation which assess and quantify hazards and exposure limits and provide guidelines for exposure or use.

FY 1980 Accomplishments:

With the advice of the IRAC, NTIA issued Federal spectrum allocations and regulations reflecting changing needs and policies. NTIA participated in and commenced the implementation of the results of the 1979 World Administrative Radio Conference (WARC 79). Additionally, ad hoc working groups were established to prepare for four major upcoming international radio conferences concerning: (a) mobile radio; (b) satellite broadcasting; (c) space planning; and (d) High Frequency (HF) broadcasting.

NTIA continued as the focal point for the coordination of Federal agencies' nonionizing radiation efforts. A detailed report recommending changes in Federal nonionizing radiation research efforts was released.

FY 1982 Objectives:

(1) to issue/revise allocations and regulations governing Federal spectrum use; (2) to coordinate Federal research on the biological effects of nonionizing radiation; (3) to test the viabililty of applying economic and marketplace factors for management of the radio spectrum; and (4) to develop U.S. proposals/positions for, participate in, and implement results of international radio conferences.

Subactivity: Spectrum Management and Planning

FY 1980 Objectives:

(1) to improve Government spectrum management and use by assessing present and projected usage in allocated bands, developing plans for intra- and inter-service sharing, evaluating proposed Federal telecommunications systems to ensure that they comply with spectrum use regulations and that spectrum space will be available to them without the creation of interference problems, resolving conflicting requirements concerning Federal agencies' use of the spectrum, training Federal personnel at all career levels and operating a Spectrum Management Information Center for use by all Federal agencies; and (2) to review, process, and authorize Federal applications for frequency assignments and to maintain data base files and perform measurements necessary for this assignment function and for compliance determination.

FY 1980 Accomplishments:

Sharing plans for present and future systems were developed for 6 major frequency bands. Eighty-six proposed Federal radio communications systems (with a total projected systems cost of $7 billion) were reviewed to insure their compatibility with existing systems; design changes or restrictions in the operation of 60 percent of these systems were required, resulting in a projected cost savings of up to 10 percent of system costs.

One hundred forty Federal personnel from various agencies were trained in radio frequency management. Computer and data processing systems used in support of Federal radio frequency management were improved, to facilitate the accommodation of an increased frequency assignment action workload, projected to exceed 104,000 actions in 1981.

Approximately 93,000 Federal agency radio frequency assignment actions were taken through the Interdepartment Radio Frequency Advisory Committee (IRAC) in 1980. A total of 60,101 frequency assignments for Federal agencies were approved in fiscal year 1980.

FY 1982 Objectives:

(1) to review, process and authorize Federal applications for frequency assignments and to maintain data base files and performance measurements necessary for this activity, (2) to improve Government spectrum management and use by: developing plans for intra- and inter-service sharing in selected allocated bands, evaluating proposed Federal telecommunications systems problems, resolving conflicting requirements concerning Federal agencies' use of the spectrum; to perform measurements in selected frequency bands to assist in band sharing studies, compatibility analysis, and compliance with standards and authorized spectrum usage; and to provide technical engineering support in preparation for and participation in international conferences; and (3) to operate a spectrum management career development intern program and information center.

Subactivity: Technology for Efficient Use of Spectrum

FY 1980 Objectives:

(1) to provide Government and industry telecommunications designers and planners with new data and new analytical methodology which will improve the reliability and spectrum efficiency of signal transmission and reception; (2) to provide engineering models and design techniques to Government and industry telecommunications users and planners so as to allow more users to fit into crowded portions of the spectrum; and (3) to provide necessary data, systems models, and evaluation methodology to government agencies so that they may make better use of radio telecommunications systems to achieve their primary missions.

FY 1980 Accomplishments:

NTIA maintained and expanded propagation data and techniques bank to assure that the investment in this activity continues to be available to Federal agencies and industry. NTIA continued its research effort to improve engineering models and system design techniques to allow more effective use of the crowded, lower frequency bands. In addition, NTIA developed prediction performance models for high-rate microwave systems to allow expansion in underutilized bands.

FY 1982 Objectives:

To provide Government and industry telecommunications users and planners with analytical methodology, engineering models, design techniques and data that will improve the efficiency and efffectiveness of spectrum use.

Activity: Public Telecommunications Facilities Grant Administration

FY 1980 Objectives:

To provide administrative support for the equitable geographic distribution of matching grants in the planning and construction of public telecommunications facilities.

FY 1980 Accomplishments:

Grants totalling $23.7 million were made in fiscal year 1980 to 186 noncommercial telecommunications entities in 46 states, the Virgin Islands, and the District of Columbia. More than 460 applications requesting about $80 million were received.

In addition to grant awards, NTIA sponsored the first nationwide satellite teleconference on public broadcasting issues, in conjunction with the Corporation for Public Broadcasting and other cognizant groups. This first-of-its-kind effort connected participants in twenty cities, and focused on alternative sources of financial support for public broadcasting, and ways in which to foster greater involvement on the part of minorities and women.

FY 1982 Objectives:

To perform activities associated with the closing out of the Public Telecommunications Facilities Program

Activity: Public Telecommunications Facilities Grants

FY 1980 Objectives

(1) to extend delivery of actual public radio coverage from 62% to 74% of the U.S. population, and delivery of actual public television coverage from approximately 67% to 76% of the U.S. population; (2) to improve to state-of-the-art the transmission and basic production and reproduction capabilities of existing noncommercial radio and television stations; (3) to assist non-broadcast telecommunications entities in the activation, expansion, or improvement of facilities to state-of-the-art capabilities; (4) to support the effective use of Federal funds for those purposes through planning grants, technical assistance, and coordination with the FCC, DHEW, and industry-related organizations such as CPB, NPR, PBS, NAEB, and JCET* on matters relating to planning grants data retrieval, long-range planning, minorities' and women's concerns; (5) to develop and submit to the President and the Congress a comprehensive update to the plan outlining a five-year projection of national public telecommunications facilities needs and the expenditures to provide such facilities.

FY 1980 Accomplishments:

Grants totalling $23.7 million were made in fiscal year 1980 to 186 noncommercial telecommunications entities in 46 states, the Virgin Islands, and the District of Columbia. More than 460 applications requesting about $80 million were received.

Most of the funds awarded were applied to the construction of telecommunications facilities, with 74 percent of the grants awarded going toward extension of services in new areas, and the balance going to upgrade or strengthen existing facilities. Of the 186 grant recipients, 97 received special consideration as required by the 1973 Public Telecommunications Financing Act (P.L. 95-567) for applications from women and minority groups. Twenty-eight planning and construction grants went to establish new public telecommunications facilities to be controlled by minorities or women.

FY 1982 Objectives:

None included in March 1982 Budget Request.

*Corporation for Public Broadcasting, the National Public Radio, Public Broadcasting Service, National Association of Educational Broadcasters, National Federation of Community Broadcasters, and Joint Council on Educational Telecommunications.

MERGER OF OT AND OTP

Since most of the functions of the Office of Telecommunications and Office of Telecommunications Policy were merged in March 1978 to form NTIA, what have been the advantages and disadvantages of this merger?

Advantages include more flexibility to deal with a wider variety of policy issues and closer liaison between policy and operational, engineering, and economic personnel. Disadvantages include reduced visibility, more difficulties in achieving consensus among Federal agencies, and less influence in international telecommunications forums.

DOMESTIC COMMON CARRIER

Since FCC adopted Docket 20188 on November 6, 1980, which changed its depreciation policies, what role do you now see for NTIA in 1981 and 1982?

NTIA involvement in depreciation issues in 1981 and 1982 will be limited. With resolution of broader policy concerns, the implementation of new depreciation policies will, by necessity, be left to the FCC and the states.

Is there a depreciation reserve deficiency? If we move to deregulate terminal equipment who should bare the shortfall?

As a result of previous depreciation policies in a less competitive environment there may well be a depreciation reserve deficiency, however, NTIA does not have the necessary data to calculate the amount.

Any shortfall which may result from the deregulation of terminal equipment can be minimized by adoption of adequate transitional mechanisms which NTIA recommended in our petition for reconsideration of the Computer II division.

What impact will recent FCC actions in its Computer II and competitive carrier proceedings have on the entry by the Postal Service in the distribution of mail electronically?

The Computer II decision and the competitive carrier proceeding apply to private sector common carriers, and whether the Post Office is a common carrier under the Communications Act is an open question.

The fundamental issue, not conclusively resolved, is the extent of FCC jurisdiction over the Postal Service. (An FCC ruling of jurisdiction over USPS electronic mail service was brought to court by the Service, and subsequently dismissed without decision). A recent bill, H.R.2813, would authorize the Postal Service to provide electronic mail service, and provide electronic communications (without USPS facility ownership), at its discretion.

If, as currently stands, the FCC has jurisdiction over Postal Service electronic mail service, then an issue is whether the FCC finds it in the public interest to treat the Government electronic mail service as a fair competitor with private sector electronic message services. If so ruled, then the Postal Service E-COM service may or may not be regulated as a result of the Computer II and competitive carrier proceedings. The FCC could, however, rule the need for additional safeguards to assure the public interest is met with the Government providing (at least in part), services competitive with private industry offerings. The impact of the Computer II and competitive carrier proceedings is thus unclear.

Why is NTIA proposing to conduct studies and develop policies on USPS transition into the electronic message field?

NTIA is proposing policy analysis and study on issues relating to the involvement of the Postal Service in the electronic message field primarily because of the need to examine the economic and technological impact along with the requlatory concerns resulting from the participation of a quasi-independent Federal entity in the telecommunications marketplace.

During the spring of 1979, NTIA chaired an interagency committe and coordinated a Presidential Review Memorandum process which led to the President's policy statements in July of 1979 on the role of the U.S. Postal Service in electronic communications.

Both the Postal Service and the electronic communications industry provide essential national communications capabilities, but under different statutory guidelines and regulatory objectives. The lack of a national policy defining what role the Postal Service should have in providing electronic message services is restraining both the electronic communications industry and the Postal Service in developing advanced, innovative, national communications services. The proposed studies and policy development are a continuation of previous initiatives to resolve this important issue so that business and the public will have the benefit of diverse electronic message services that are today technologically and economically feasible. These studies will also provide a valuable insight into whether in fact electronic communications provides a threat to traditional mail volume and revenue, and thus potential increased burden on Federal appropriations; and if such threat appears to be real, when it might occur, and what actions might be appropriate to sustain essential communications service.

PUBLIC TELECOMMUNICATIONS FACILITIES GRANTS

A rescission of $25.7 million has been proposed for Public Telecommunications Facilities grants. When coupled with the 25% reduction in funds for the Corporation for Public Broadcasting it becomes clear that public broadcasting assistance registers as a low priority item in the budget. I, for one, think that the quality of commercial television has reached an all-time low. The Federal

Government should be aggressively supporting public telecommunications and not pulling back on support. I would be interested in hearing your views on this subject.

First, the quality of public broadcasting has reached an all-time high, in part due to the Federal matching dollars provided by the Public Telecommunications Facilities Program (PTFP), which have served to encourage the development of the public broadcasting systems as we know them today. In 1962, when direct Federal support for public TV began, only 76 stations were on-the-air serving less than a quarter of the American population. In 1967, when Federal assistance was expanded to include public radio, only 67 of the nearly 400 noncommercial radio stations were providing community-wide services qualifying them for financial support from the Corporation for Public Broadcasting (CPB). Today, there are 292 public TV stations on-the-air and 217 "full service" public radio stations which are CPB-qualified.

Over 90% of the population now receives at least one public TV signal and about 70% receives some public radio services. PTFP was intended originally as a "seed money" program to stimulate non-Federal sources of funding for the development of public broadcasting facilities across the country, and over the past two decades, this objective essentially has been reached. In recent years, public broadcasting has enjoyed increasing support from other non-Federal sources such as businesses, subscribers, and foundations. At this time, when highest priority must be placed on reducing Federal spending, support for public broadcast facilities is no longer an appropriate burden for the Federal government to bear.

Since the Corporation for Public Broadcasting is not part of the Department of Commerce NTIA is not in a position to discuss details of their proposed reductions. However, it is our understanding that the reductions were directed toward reducing administrative costs and centrally funded program production. The Community Service Grants (CSG) program which provides funds to support local stations will not be affected.

In regards to the rescission of grant money, State organizations and local assistance have already pledged matching funds for these facility grants. How can you justify eliminating this program so abruptly?

There is never a "good time" to cease support of any special grant-in-aid program, such as the Public Telecommunications Facilities Program (PTFP). The new Administration has had to confront head-on the economic crisis of this country. In this light, the termination of PTFP has been recommended. However, it has served the American people well and has provided a very substantial base for the continued availability of such services. The Administration believes that matching funds already committed for the proposals applying for 1981 funds will, to a large extent, be applied toward initiating a substantial portion of such proposed projects.

What is the total number of applicants and what percent of these applicants receive grants? How much local funding does this represent?

559 applicants have requested PTFP funds for FY 1981. Approximately one-third of these entities would receive grants and they would represent about $17 million in local and other non-Federal funds.

What other sources of funding would be available for persons wishing to construct public television or radio stations?

Public telecommunications entities can currently seek funding from various sources, including the following: general revenue sharing, the Corporation for Public Broadcasting's Planning and Operational Assistance Grants, local and State tax revenues, private foundations, and subscription and membership incomes.

The rescission request for FY 1981 states that 90% of the American public can now receive public TV and radio, therefore the PTF program is no longer needed. But other studies indicate that only 60% can receive public radio, and that, of the 90% who are reported able to receive public TV, many, especially in UHF areas like Washington, D.C. cannot receive adequate reception. What are the facts about coverage?

Current NTIA data indicate that public television services are available to over ninety percent of the American population, and public radio about seventy percent of the population.

There are approximately one thousand non-commercial AM and FM radio stations in the United States, many of which are licensed to religious organizations. Many are also licensed to schools and colleges for low power transmission of limited service programming to very limited audiences, and often are used only for training purposes. In order to determine those stations that are providing public service radio programs to broad segments of the people in their service areas, NTIA has included all stations so identified by either the Corporation for Public Broadcasting (CPB), National Public Radio (NPR), and the National Federation of Community Broadcasters (NFCB). Thus, NTIA's coverage data are not limited to those stations which have been determined to be CPB qualified.

With regard to the question of interference in UHF areas, there are many reasons for this, such as terrain, poor receiver antennae, and receivers which are low in quality and sensitivity. Improvements of this condition are now under study. Research sponsored by the Public Broadcasting Service (PBS) engineering committee as well as by the private sector is being conducted on more efficient UHF transmitters, and new modulation techniques to improve the more effective directional transmitting antennae. NTIA's expert engineers at the Institute for Telecommunication Sciences have undertaken extensive work in this area. Research also continues in the area of circular polarization in the UHF band. The advantage of circular polarization is that nulls in the field are fewer and smaller. PBS is making a concerted effort to advise the public on what can be done on the receiving end to improve UHF signals.

One popular suggestion to improve the coverage of an existing UHF station is to double the transmitted power. However, there is much debate over this technique since higher electrical costs are associated with increases in transmitter power. Many UHF stations now operate at less than peak power due to the high energy costs involved, and this could, perhaps, be the cause of a smaller number of UHF coverage problems.

Located in Washington, D.C., WETA - TV has taken substantial steps to improve its signal through a facilities grant for a new transmitter and antenna, and increase of antenna height. CPB's office of Engineering Research, NTIA's PTFP and WETA collaborated in this project. Currently, with a good outside antenna, a reasonably good WETA signal should be available throughout the Washington area.

Coverage cannot be the only criterion of need. Are not improvement of existing facilities as well as expansion of service also considered? (Note there is a need to provide color TV equipment where only black and white facilities are available now.)

Station improvement projects have been eligible for support in the past, and have included upgrading of facilities to enable stations to produce locally-originated programming to a community, as well as the replacement of obsolete or worn-out equipment beyond its useful operating life.

These projects have been low priority projects in recent years, with only about one-quarter of the funds available in a given year expended for this purpose. This Program's original mission was to stimulate the initial development of public broadcast facilities, and not to continue to maintain the operational ability of existing facilities. The Administration believes that continued support of these projects is more appropriately borne by the localities and feels that there is an adequate number of other sources of funding available to sustain the current system.

The rescission request notes that the expansion of satellite programs and cable systems will "effectively soften the impact of the program's termination". Is this really so? How will satellites help bring public TV and radio signals to homes in the next 5 to 10 years, when most people agree that the so-called direct broadcast satellite service may not even be legally authorized within a decade, let alone in very many homes?

With the availability of cable television channels on the increase, and the projections for cable penetration in this country rising steadily above the current twenty percent penetration level, it is believed that cable will provide a viable alternative means of distributing public broadcasting. As cable systems expand and new systems are installed, they will bring a multitude of services into areas presently unserved. Public television and radio signals will be included with these new and additional services.

The rapid growth in cable television is due in large part to the increased use of satellite systems to deliver pay, and other programming to cable headends. It is to this combination of satellite and cable system technology that the rescission message refers.

Section 394 of the Public Telecommunications Financing Act of 1978 called for a five-year plan for facilities development by NTIA. Where is that plan? We understand a draft, actually a finished *report, has been available for many months. When will this draft be released?*

A revised version of the Plan was recently submitted to the Secretary of Commerce. It is currently being reviewed and will be submitted to the Congress in the near future.

In the June 1980 draft of the Plan, the summary of the report states "It appears the minimum needs of public telecommunications can be met by appropriations between $35 and $40 million per year through the five-year period." Are you concerned with this conclusion?

The assumptions of the June 1980 draft plan included the following:

- that 95% public television coverage will occur within the five-year period;
- that 80% public radio coverage will occur within the five-year-period;
- that increased minorities and women involvement will occur with the planning of about 60 new projects and the construction of about 75 projects;
- that projecting costs for the strengthening of existing stations over the five-year period will be based on the estimated annual system depreciation.
- that the Federal government continue supporting funding for both extension and systematic replacement of most of the current inventory of equipment as it needs to be replaced.

Both the current and the previous Administrations believe that the Federal government should no longer subsidize replacement of equipment which is the largest part of the costs projected in the draft June plan. The current Administration has gone one step further by proposing termination of Federal funding for continued extension. The Administration is concerned with the needs of public telecommunications, but feels greater concern for the need immediately to combat the economic crisis in this country, and prioritize the spending of the Federal dollar.

ENHANCING PARTICIPATION OF MINORITIES

What are the rating systems referred to in NTIA's effort to enhance participation of minorities? Why is NTIA involved in this area? If such systems need changing to improve advertising flow why won't private sector concerns in response to the potential for additional business make such changes?

The rating systems referred to are the methodologies used to measure the size of the listening audience of the electronic media. There is some evidence that the present rating system is inadequate and that the size of the minority audience may be understated. Such a situation could result in a loss of advertising dollars (revenues) for minority-owned or formated stations since both the potential to attract advertising dollars and the advertising rates themselves are directly related to the reported size of the listening audience.

NTIA is involved in this area because of the need by minority broadcasters for assistance in identifying inadequacies and inconsistencies in the present system. Such attempts by these broadcasters over the past decade have been unsuccessful.

Presently, NTIA is working in conjunction with the private sector (including broadcasters, major advertising firms, and other government agencies) to resolve the concerns.

ELIMINATION OF THE LESSER DEVELOPED COUNTRY TRAINING PROGRAM

The revised budget apparently proposes to delete NTIA's Lesser Developed Country (LDC) training program. What activities have been carried out under this program so far, if any? What has been their effect?

Presidental Directive 42, Administration Civil Space Policy, directs NTIA to translate domestic experience in emerging public service programs into potential programs for lesser-developed countries and remote territories. To respond to this mandate NTIA will conduct an LDC training program in the fall of 1981. Through a cooperative agreement NTIA will bring some 12 LDC personnel to the U.S. for a variety of seminars, plant visits and other learning experiences. Key satellite industry leaders will be included in the program seminars and site visits to sensitize them to the potential of the developing world as a market for American satellite services and products. One criteria for selection of the developing country participants will be the financial ability of their countries to utilize such technology. The training will emphasize public service applications of satellite technology to such developmental programs as education, health, agriculture, nutrition, etc., in which the U.S. is the world leader.

We have contacted the American Institute for Astronautics and Aeronautics to help arrange private industry participation in providing these experiences. Furthermore, as a part of that cooperative agreement, other possible sources of public and private support in this area will be explored.

Although the LDC training program will not take place until the fall of 1981 and no future programs will be proposed, we expect the program to meet the technology transfer objectives for 1981 and to encourage private and public support to carry on similar activities in future years without NTIA funding.

Given the criticism which has been directed at U.S preparation for international radio conferences — particularly the 1979 World Administrative Radio Conference — and the apparent need to promote a better understanding of U.S. positions prior to their commencement, how will the deletion of the LDC program hamper this? To what extend will the functions envisioned for NTIA be assumed by other Federal agencies?

A realization of the importance of the upcoming 1983, 1984, and 1985 satellite related administrative radio conferences is indeed one motivation for the LDC training program. It is felt that better mutual understandings, paths of communication, and personal relationships will develop which would benefit the future conference process.

We do not feel the deletion of the LDC training program will hamper a better understanding of U.S. positions because we are seeking, through the current year's program, to define industry, as well as other Federal and non-Federal agency, sponsors to continue this program and thus the anticipated benefits to the upcoming conferences.

NTIA's satellite program staff has for months worked closely with the State Department, the Agency for International Development, Intelsat and our own radio conference preparation staff. This coordination is to ensure that countries and individuals, who will be influential in the upcoming radio conferences, will participate in NTIA's LDC program. The NITA satellite program manager who is in charge of the LDC program is an active participant and leader in joint government-industry conference preparation activities, and first made the program known to prospective LDC participants at the October, 1980 international meetings of the International Consultative Committee on Radio (CCIR). The CCIR is of course laying the technical foundations for the upcoming radio conferences.

NTIA can not speak for other Federal agencies. However, the LDC program was just one of many ways we have of promoting a better understanding of U.S. positions, and NTIA, as well as other Federal agencies are actively engaged in pursuing these routes which include, among others, participation in specific CCIR conference preparatory activities and Inter-American Committee on Telecommunications (CITEL), a branch of the Organization of American States seminars, as well as numerous bilateral meetings.

ASSISTANCE TO MONTANA

You state "in order to coordinate nonduplicative efforts in the development of telecommunications systems you are helping Montana plan its public service telecommunications components." Please elaborate. Also, how was this project selected? (Justification page NTIA-21)

NTIA is offering technical planning assistance to the Montana Telecommunications Project established by the State to survey the facilities and needs of its State agencies and coordinate the procurement and use of facilities for increased efficiency. In addition NTIA is examining the possibility of shared use of Federal facilities in the State of Montana. Finally, NTIA is examining Montana's past experience with telecommunications related Federal programs and developing recommendations for both the State and the Federal government on how the programs and the States' participation in them might be improved.

Montana was selected as a prototype case because of the problems and opportunities offered by low population density, large distances between residents and public service facilities, available federal land and telecommunications resources for possible sharing with the state, and lack of an integrated state planning mechanism for telecommunications. We expect that the results in Montona, to be documented in reports, will be of great benefit to other states with similar characteristics. These reports will be the primary source of NTIA's assistance to other states.

DOMESTIC COMMON CARRIER

In what order of priority in FY 1981 will NTIA address itself to the issues involved in the relationships between and among the constituent elements of dominant carriers - such issues as: information flows, research and development, procurement, etc.? In which of these areas do you see the greatest potential for anticompetitive abuse?

The issues concerning the creation of the AT&T separate subsidiary and its relationship to the parent company are all interrelated and have the highest level of priority in the domestic common carrier program for FY 81. In January 1981 NTIA filed a petition for a notice of inquiry and proposed rulemaking asking for greater structural separation of the Bell subsidiary than had been adopted by the FCC in Computer Inquiry II. The NTIA proposal, consistent with those advanced in proposed common carrier legislation by the House and Senate in the 96th Congress, would require the Bell subsidiary to carry on its own research and development and manufacturing. We believe that adoption of this proposal would alleviate many of the concerns regarding cross subsidies in relation to information flows, R&D and procurement. All of these areas raise potential anticompetitive concerns but the creation of a stand alone fully separate subsidiary will, we believe, minimize this potential.

Do you believe that the March 1, 1982, deadline for creation of competitive separate subsidiaries is realistic in view of the number of open questions (i.e. depreciation, equitable access charges, etc.) which remain to be resolved and which are of crucial significance to the overall competitiveness of the industry?

In the reconsideration of Computer II, the Commission required the Bell subsidiary to provide only new customer premise equipment (CPE) by the March 1, 1982, deadline. NTIA believes that this deadline can be met for new CPE and enhanced services. Difficult questions regarding the implementation of Computer II remain, however, and require expeditious resolution by the FCC, the states and the joint board. We continue to believe that a bifurcated transition will minimize transitional problems and that delay in the creation of the separate subsidiary would not be in the public interest.

Will a move to deregulate certain aspects of the domestic common carrier industry necessarily require less regulatory oversight — at least in the short run? What role will NTIA play in monitoring the competitiveness after such deregulation? (Justification NTIA-14)

Experience concerning deregulation with both the CAB and ICC has shown that, at least in the short run, regulatory oversight of a level at least equal to that preceding deregulation is required in order to implement crucial transitional decisions.

During any transition involving telecommunications deregulation, regulatory involvement will be required to oversee and monitor the mechanisms that are put in place to assure fair and equitable competition. We believe in the long run, burdensome and unnecessary regulation can be substantially eliminated for markets that are workably competitive.

NTIA will continue to make policy recommendations to the FCC, the Congress and states on issues that require resolution as a result of transition to a more competitive and deregulated telecommunications industry.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

TELECOMMUNICATIONS PROTECTION

What can you tell us in open session about NTIA's efforts in the Telecommunications Protection Program? That is, are we better off than a few years ago, particularly in the transmission by Federal agencies?

We are certainly much better off now in the protection of the telecommunications transmission of Federal agencies. While NTIA's responsibilities in this program are not directly focused on the development of protection technology or the implementation of protection plans, we have worked with the Department of Defense and other agencies in a program designed to reduce the loss of sensitive information because of the vulnerability of our telecommunications to interception.

NTIA provides advisory services to the government and the private sector. In this activity we have conducted briefings for all the major common carriers to inform them of the government's concern about telecommunications interception and to explain the program that was established to protect telecommunications systems. Within the government, we have conducted 12 telecommunications and information vulnerability surveys at various government agencies. These have resulted in an increased awareness of the need for telecommunications protection and fostered a number of constructive reactions to decrease the loss of sensitive information through telecommunications interception. NTIA also conducts monthly telecommunications vulnerability awareness seminars which have proven an effective means of instructing government employees in the vulnerabilities of the telecommunications systems they use each day. A survey of the manufacturers of communications protection equipment has been completed and a "Users' Guide" of available products published and distributed.

We have proposed telecommunications protection strategies and related policies to the National Security Council's Special

Subcommittee on Telecommunications Protection. Recommendations for a national policy on public cryptography and a policy for the protection of satellite circuits used by the government were also developed. These recommendations are all still under review by the subcommittee. Nevertheless, our recommended policies for the open solicitation of protected telecommunications service are being implemented in current procurement actions at GSA. Proposals for increasing the private sector interest in telecommunications protection technology through funding support, reduced export constraints, and clearer patent procedures are under consideration at the appropriate Federal agencies.

NTIA has also been active in the preparation of Federal standards for the use of the Data Encryption Standard and in studying possible applications of unclassified public key cryptographic systems. An evaluation of the suitability for government use of selected commercially developed telecommunications protection equipment is also underway. Classified technical support is also provided to the Department of Defense.

CONTRACTS RELATING TO BROADCAST AND COMMON CARRIER

What contracts did you fund during FY 1980 relating to broadcast and common carrier telecommunications? What use was made of these studies, both internally and by FCC or the Congress?

NTIA did not fund any contracts in FY 1980 relating to broadcast and common carrier telecommunications.

MINORITY PARTICIPATION IN BROADCASTING

What success can NTIA cite in enhancing participation of minorities in the broadcasting industry?

NTIA's work in coordinating the efforts of all Federal government agencies and the private sector in dealing with minority ownership have helped to bring about a 100 percent increase of minority owned and controlled stations in 2 1/2 years. Also, NTIA developed and initiated the concept which resulted in the IRS approved National Association of Broadcasters Minority Broadcast Loan Fund. In addition NTIA held the first Minority Women's Commercial Broadcasting and Technology Conference which was successful in identifying opportunities for future enterpreneurs to enter the telecommunications service market place. A contract was funded in FY 1981 to examine the adequacy of the rating methodology used to determine the listening audience of stations --ultimately determining the revenues for these stations.

In view of the proposed elimination of EDA, and the reduction in SBA's loan funds, as well as the Farmer's Home Business and Industrial Loan Program, how much will NTIA save in not having to promote funds for minority broadcasters from these sources?

NTIA will not save any funds due to these proposed reductions.

Will a move to deregulate certain aspects of the domestic common carrier industry necessarily require less regulatory oversight — at least in the short run? What role will NTIA play in monitoring the competitiveness after such deregulation?

Experience concerning deregulation with both the CAB and ICC has shown that, at least in the short run, regulatory oversight of a level at least equal to that preceding deregulation is required in order to implement crucial transitional decisions.

During any transition involving telecommunications deregulation, regulatory involvement will be required to oversee and monitor the mechanisms that are put in place to assure fair and equitable competition. We believe in the long run, burdensome and unnecessary regulation can be substantially eliminated for markets that are workably competitive.

NTIA will continue to make policy recommendations to the FCC, the Congress and states on issues that require resolution as a result of transition to a more competitive and deregulated telecommunications industry.

Is there a depreciation reserve deficiency? If we move to deregulate terminal equipment who should bare the shortfall?

As a result of previous depreciation policies in a less competitive environment there may well be a depreciation reserve deficiency, however, NTIA does not have the necessary data to calculate the amount.

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The fundamental issue, not conclusively resolved, is the extent of FCC jurisdiction over the Postal Service. (An FCC ruling of jurisdiction over USPS electronic mail service was brought to court by the Service, and subsequently dismissed without decision). A recent bill, H.R.2813, would authorize the Postal Service to provide electronic mail service, and provide electronic communications (without USPS facility ownership), at its discretion.

If, as currently stands, the FCC has jurisdiction over Postal Service electronic mail service, then an issue is whether the FCC finds it in the public interest to treat the Government electronic mail service as a fair competitor with private sector electronic message services.

If so ruled, then the Postal Service E-COM service may or may not be regulated as a result of the Computer II and competitive carrier proceedings. The FCC could, however, rule the need for additional safeguards to assure the public interest is met with the Government providing (at least in part), services competitive with private industry offerings. The impact of the Computer II and competitive carrier proceedings is thus unclear.

Why is NTIA proposing to conduct studies and develop policies on USPS transition into the electronic message field?

NTIA is proposing policy analysis and study on issues relating to the involvement of the Postal Service in the electronic message field primarily because of the need to examine the economic and technological impact along with the requlatory concerns resulting from the participation of a quasi-independent Federal entity in the telecommunications marketplace.

During the spring of 1979, NTIA chaired an interagency committe and coordinated a Presidential Review Memorandum process which led to the President's policy statements in July of 1979 on the role of the U.S. Postal Service in electronic communications.

PUBLIC TELECOMMUNICATION FACILITIES

Section 394 of the Public Telecommunications Financing Act of 1978 (P.L. 95-567) required the Secretary of Commerce to prepare a 5-Year Plan for providing the necessary public telecommunications equipment needed to meet the objectives of the Act.

— *Has that plan been developed?*

A draft of the long-range plan has been completed by NTIA, and is currently under review by the Secretary of Commerce and OMB.

— *What amounts are projected in that plan?*

This draft contains projections of the total cost for extending public telecommunications services to unserved areas and for sustaining the capabilities of existing facilities. It does not make any recommendations on Federal spending levels, but estimates the total needs of the systems.

Does the Reagan Administration contend that the purposes of the Act have been accomplished?

Over 90% of the population now receives at least one public TV signal and about 70% receives some public radio services. PTFP was intended originally as a "seed money" program to stimulate non-Federal sources of funding for the development of public broadcasting facilities across the country, and over the past two decades, the Administration feels that this objective essentially has been reached.

In the absence of further Federal funding, how does the Reagan Administration expect the needs expressed in the plan to be fulfilled?

Public telecommunications entities can currently seek funding from various sources, including but not limited to the following: general revenue sharing; the Corporation for Public Broadcasting's Planning and Operational Assistance Grants; local and State tax revenues; private foundations; and subscription and membership incomes.

Is it the intention of the Reagan Administration to eliminate the concept of public television and radio by cutting off the facilities grants and substantially reducing the funding of the Corporation for Public Broadcasting?

The Administration does not support the elimination of the concept of public television and radio. The value of public television and radio for this country is widely known and appreciated. The Administration believes it has and will continue to provide a vital service to the American people. What the Administration contends, however, is that special grant-in-aid programs, such as the Public Telecommunications Facilities Program (PTFP), must be prioritized with regard to Federal spending and the needs of the country during severe economic times. And the Administration believes that the rescission of PTFP is a necessary restraint on the Federal budget at this time.

Since the Corporation for Public Broadcasting is not part of the Department of Commerce,NTIA is not in a position to discuss details of their proposed reductions. However, it is our understanding that the reductions were directed toward reducing administrative costs and centrally funded program production. The Community Service Grants (CSG) program which provides funds to support local stations will not be affected.

MINORITY BUSINESS DEVELOPMENT AGENCY

STATEMENT OF ALLAN A. STEPHENSON, ACTING DIRECTOR

ACCOMPANIED BY:
HERBERT S. BECKER, ASSISTANT DIRECTOR FOR PLANNING, BUDGET, AND EVALUATION
HAROLYN B. CHISM, BUDGET OFFICER
NANCY A. RICHARDS, DIRECTOR, OFFICE OF BUDGET

BUDGET REQUEST

Senator WEICKER. Our next request is that of the Minority Business Development Agency. The amount requested is $57,413,000, a decrease of $1,878,000 over the 1982 base. It provides for 296 permanent positions. Appearing on behalf of this request is Allan Stephenson, Acting Director; who is accompanied by Herbert Becker, Assistant Director for Planning, Budget and Evaluation; and Harolyn Chism, Budget Officer.

Mr. Stephenson, we are glad to receive your request at this time. You may submit your statement in its entirety for the record if you want, or, go ahead and synopsize it.

OPENING REMARKS

Mr. STEPHENSON. Thank you, Mr. Chairman. As you indicated, we are quite pleased to be here to discuss our fiscal year 1982 appropriation request.

The Minority Business Development Agency, which succeeded the Office of Minority Business Enterprise—OMBE—in fiscal year 1980, was structured to refocus and intensify business development assistance to minority entrepreneurs and to become a more effective and efficient vehicle in merging the minority business community into the national economic mainstream. Over the past year, MBDA has increased its capacity to address issues affecting minority entrepreneurs. I think the classic example would be the recent committee's look at the plight of the auto industry. During the review very little attention was given to minority business development.

We called together a meeting of the minority auto dealers and the major auto manufacturers to get a better sense of how the present crisis was affecting minority business auto dealers.

From that, we were able to impact on the final report submitted. We sought special recognition to the severe financial problems minority auto dealers were having. As a result we were included in the SBA 8(a) loan guarantee program and $12 million in direct loans were made to minority auto dealers.

ACQUISITIONS PROGRAM

Another program that we have recently instituted is an acquisitions program that is designed to increase the number and size of minority-owned businesses.

As you are aware, minorities control very little in the area of capital assets. By using the acquisitions in process we will not only increase the size of minority businesses but put them in a position where they are owning more in terms of capital resources.

Our fiscal year 1982 budget request has the following components: Enterprise development, policy and market development, research and information, and program management.

FISCAL YEAR 1982 REQUIREMENTS

For fiscal year 1982, MBDA's total funding requirements are $60,813,000, and 296 full-time permanent positions. Of the amount required, MBDA's appropriation request is $57,413,000; the remaining $3,400,000 is carried over as funds deferred from fiscal year 1981.

Included in the fiscal year 1982 request is $35,213,000 for enterprise development, an increase of $1,522,000 over the fiscal year 1982 base.

For the policy and market development activity we are requesting $9,814,000 in fiscal 1982. This amount is level with fiscal 1981 availability. Through this activity, MBDA acts as an advocate and catalyst to promote and identify opportunities for increased minority business participation in the domestic and international markets as well as in the public sector.

We are proposing $895,000 for the research and information activity. This requested amount is the same as for fiscal year 1981. This will enable MBDA to continue to conduct research and provide data pertinent to minority business policy and program development. It will also allow for the systematic identification and dissemination of information relating to minority business development, opportunities, and capabilities.

Finally, we are requesting $14,891,000 in fiscal year 1982 for program management. Fiscal year 1982 program management activities will be devoted to: (1) improvement of the planning, developing, and delivery of business services resulting from the redirection of and revisions to MBDA programs in fiscal year 1981; (2) further refinement and integration of program planning, financial management and control, and performance measurement and evaluation; (3) further improvement of the quality and cost effectiveness of program activities by means of greater outreach, competition, and productivity of grantees; and (4) the development, publication, and dissemination of information designed to assist minority managers in achieving greater growth and profitability of minority firms.

We in MBDA view 1981 and 1982 as the years to complete the redirection of the Federal minority business development programs. Through this appropriation request, we have expressed a need to serve the minority business community through practical, specific programs as well as effective methods to implement them.

PREPARED STATEMENT

Mr. Chairman, this concludes my opening statement. I will be pleased to answer any questions which you or members of the committee may have regarding the firscal year 1982 appropriation request for the Minority Business Development Agency.

[The statement follows:]

STATEMENT OF ALLAN STEPHENSON

Thank you for this opportunity to discuss the FY 1982 Appropriation Request for the Minority Business Development Agency (MBDA). With me are Herbert S. Becker, Assistant Director for Planning, Budget and Evaluation and Harolyn B. Chism, Budget Officer.

The Minority Business Development Agency, which succeeded the Office of Minority Business Enterprise (OMBE) in FY 1980, was structured to refocus and intensify business development assistance to minority entrepreneurs and to become a more effective and efficient vehicle in merging the minority business community into the national economic mainstream.

MBDA's impact on minority business development is manifest in two ways: First, this is done by providing the management and technical assistance needed to improve productivity and lower unit labor costs among minority segments of the economy. By facilitating performance improvements among minority enterprises, MBDA contributes to the performance of these firms in the overall economy.

Second, MBDA facilitates the development and growth of enterprises that provide needed products in areas where non-minority firms frequently choose not to locate. This helps to insure that the benefits of the U.S. economy reach every segment of the consuming population.

FINANCIAL ASSISTANCE

Over the past year, MBDA has increased its capacity to address significant issues affecting minority entrepreneurs. For example, MBDA, in its role as coordinator for Federal programs that relate to minority business, initiated a conference to determine the needs of minority auto dealers, bringing together representatives from General Motors, Ford, and Chrysler and some 50 minority auto dealerships. It was determined that without timely financial assistance, the marketplace could have lost 50% of the nearly 250 existing minority auto dealerships. MBDA submitted its report and recommendations to the federal government's task force in the "Plight of the Automobile Industry," chaired by the Department of Transportation. This resulted in minority auto dealerships becoming eligible for assistance under the Administration's program to aid the industry. Additionally, a $12 million direct loan fund was made available to minority auto dealerships to help ease their unique financial problems.

ACQUISITIONS

In FY 1981, MBDA also established a program to assist minority individuals, partnerships and corporations to acquire existing medium and large-sized firms, divisions of corporate entities and established product lines as a means of increasing the size and profitability of minority business ownership.

Minority businesses have traditionally lacked access to adequate amounts of capital for start-up and expansion. As a consequence, minority-owned firms experience severe obstacles in getting started, continue to remain small, and often fail in large numbers. Presently, total, U.S. business capital assets are valued at $1.2 trillion. Of this sum, minority businesses hold a mere $3.3 billion or .27% of the total. Such a state is detrimental to the participation and long-term growth of minority businesses within our free enterprise system.

The acquisition program provides special assistance that will enable minorities to own and control firms in manufacturing, high technology industries, and other critical areas such as energy, telecommunications and transportation. Traditionally, these industrial areas are profitable, produce large numbers of jobs, and are areas where minority participation is minimal or non-existent. Over the long-range, this program will not only increase the number of minority-owned firms, it will have a positive impact on the minority share of the capital assets.

FY 1982 BUDGET REQUEST

MBDA's structure has the following components: Enterprise Development, Policy and Market Development, Research and Information, and Program Management.

For FY 1982, MBDA's total funding requirements are $60,813,000 and 296 full-time permanent positions. Of the amount required, MBDA's appropriation request is $57,413,000, the remaining $3,400,000 is carried over as funds deferred from FY 1981.

Included in the FY 1982 request is $35,213,000 for Enterprise Development, an increase of $1,522,000 over the FY 1982 base.

In FY 1981, the Enterprise Development program initiated a new funding allocation for the distribution of the agency's General Business Services (GBS) program. The GBS program is the largest assistance program that MBDA funds. The program's main function is the provision of management and technical assistance to minority entrepreneurs throughout the United States and Puerto

Rico and includes financial analysis, marketing, sales, business operations, procurement assistance and accounting. The funding allocation is based on the ranking of Standard Metropolitan Statistical Areas (SMSA) by the total number of minority business firms within the SMSA's. Considering the entire population of minority firms, 77.6 percent of these firms are within the 100 largest SMSA's and 74.9 percent of all minority firms with paid employees are within these same SMSA's

FY 1981 grant recipients are expected to assist approximately 8,800 minority-owned firms nationwide, providing an average of 80 hours of service to each client. Each professional staffyear is expected to service 24 clients.

In FY 1982 with the $3.4 million deferred from FY 1981, the agency will provide assistance to approximately 9,000 minority-owned firms by expanding the nationwide coverage to 10 additional SMSA's, bringing the total to 100. The $1.5 million increase requested for FY 1982 will improve the quality of assistance in that the number of hours of assistance provided each client will increase from an average of 80 to 100. The number of clients per staffyear will decrease from 24 to 20, thereby improving and intensifying assistance provided to clients.

ADVOCACY

For the Policy and Market Development activity, we are requesting $9,814,000 in FY 1982. This amount is level with FY 1981 availability. Through this activity, MBDA acts as an advocate and catalyst to promote and identify opportunities for increased minority business participation in the domestic and international markets as well as in the public sector. A major function of this unit is to analyze other Federal government policies affecting minority business enterprises and propose reforms when feasible. Programs funded through this activity are designed to promote minority business growth by identifying financial resources and developing strategies and programs designed to increase the availability of financing from traditional sources; to increase the number, size and profitability of minority financial institutions; and to provide short-term management development for key managers of minority firms. This activity will foster the establishment and strengthening of relationships between minority and majority business enterprises, business leaders and associations.

RESEARCH

We are proposing $895,000 for the Research and Information activity. This requested amount is the same as for FY 1981. This will enable MBDA to continue to conduct research and provide data pertinent to minority business policy and program development. It will also allow for the systematic identification and dissemination of information relating to minority business development, opportunities and capabilities.

The Information Clearinghouse maintains a library of documents and other materials pertaining to minority business and entrepreneurship. The dissemination of that information to interested parties is the clearinghouse's main responsibility. One of the most useful services to the individual entrepreneur is guidance on how to get on Federal and private bidders lists. Similarly, procurement specialists in government and private industry use the clearinghouse as a reference for minority business listings and data files.

PROGRAM ADMINISTRATION

Finally, we are requesting $14,891,000 in FY 1982 for Program Management. FY 1982 Program Management activities will be devoted to: (1) improvement of the planning, developing and delivery of business services resulting from the redirection of and revisions to MBDA programs in FY 1981; (2) further refinement and integration of program planning, financial management and control, and performance measurement and evaluation; (3) further improvement of the quality and cost-effectiveness of program activities by means of greater outreach, competition and productivity of grantees; and (4) the development, publication and dissemination of information designed to assist minority managers in achieving greater growth and profitability of minority firms.

We in MBDA view 1981 and 1982 as the years to complete the redirection of the Federal minority business development programs. Through this appropriation request, we have expressed a need to serve the minority business community through practical, specific programs as well as effective methods to implement them.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions which you or members of the committee may have regarding the FY 1982 Appropriation Request for the Minority Business Development Agency.

GENERAL BUSINESS SERVICES PROGRAM

Senator WEICKER. For fiscal year 1981 for the general business services program, MBDA will only fund organizations located in the standard metropolitan statistical areas—SMSA's—which have the greater concentration of minority businesses. In targeting the top 100 SMSA's, MBDA will fund fewer organizations; some firms and areas that were assisted in past years, will no longer receive services. For example, last year in Connecticut, MBDA made grants to five organizations, located in Bridgeport, New Haven, and Hartford, the three largest cities in the State. On February 18, 1981, MBDA solicited proposals for one grant to operate in Hartford. Organizations in the other two cities were ineligible to receive the grant. On March 5, 1981, I wrote to the Secretary of Commerce stating my concern that the grant to Connecticut should be for statewide services. Although I have not officially received a response, my staff tells me that you now plan to issue a proposal for a statewide grant, is that correct?

Mr. STEPHENSON. Yes, sir.

Senator WEICKER. By targeting assistance to the top 100 SMSA's, are there any States or other large geographical areas that currently receive a service that will no longer qualify for assistance?

Mr. STEPHENSON. There are several States that will receive reduced funding and fewer organizations. What we have attempted to do is bring a sense of reasonableness and a rationale as to how we spread our general business service dollars across the country. Historically, there has not been a readily identifiable rationale for the funding. It has been continued on a historical basis. What we are attempting to do here is target the dollars where most of the minority businesses actually reside. You will note that 77.6 percent of all minority firms are located within the first 100 SMSA's.

According to our guidelines, we target most of our resources toward businesses with paid employees. Seventy-four point nine percent of all minority firms with paid employees are located in the top 100 SMSA's. We stopped at 100 principally because our resources are rather thin. In order for us to provide a level of services necessary to a given client, we had to limit the number of SMSA's.

Senator WEICKER. What steps has MBDA taken to meet the management and technical assistance needs of minority firms which do not fall under the selected 100 SMSA's?

Mr. STEPHENSON. First, let me say that the SMSA's represent the geographical location that the given organizations will serve. It is not intended to limit services to people only within the SMSA's. Obviously, the level of resources restrict the number of clients that any given organization will assist.

Historically, our Agency has been able to reach roughly 2 or 3 percent of the minority business population. We expect that we will be reaching slightly less than that. But at the same time, we do expect that the level of services that were provided will be a lot better for a combination of reasons. One, in designing the program in 1981 we looked very closely at what the management consulting firms in the marketplace were providing to business and industry. We developed our program based pretty much on what the present state of the art is.

Additionally, in terms of reaching minority businesses we have had an extremely aggressive outreach program. I think the minority business community, the minority organizations, and the management consulting firms are well aware of the changes that have taken place. The competition thus far verifies this. In the past when we have had competition, one, two, or possibly three organizations would bid. Now we are seeing 15, 16, or 17 organizations bid for the given grant.

We are also seeing a variety of organizations, profitmaking and nonprofit organizations, large businesses, all which means that we will have a much more healthy environment in which minority business firms receive assistance.

PORTFOLIO MANAGEMENT PROGRAM

Senator WEICKER. Your budget submission says you intend to use six prototype management centers to provide concentrated assistance to 60 to 72 selected medium-sized or larger minority firms which gross over $500,000 annually. These firms represent 1.3 to 1.5 percent of all minority firms grossing in excess of $500,000. How does this service differ from the general business service program?

Mr. STEPHENSON. The general business services program basically is one in which there are greater numbers of clients. The services will span a whole variety of assistance mechanisms. In our portfolio management program, there is going to be a cost sharing program. The businesses themselves will pick up some of the cost of the assistance. Second, we are attempting to deal with businesses that have a much firmer footing in the marketplace and provide for them very concentrated assistance at the CEO level, at the middle management level, so that they can begin to better increase their own management choices for expansion.

We hope to tie into this program assistance in the technology area so that we can strengthen the base of a lot of these firms with new technologies that will allow them to grow in new industries, as opposed to trying to catch up with an old.

We would like to tie into this aspect of the program so that we begin a developmental process to see that minority firms gain a broader piece of the marketplace, increase their capacity to employ people and, of course, insure their long-term viability in the marketplace.

Senator WEICKER. Have you selected the network of corporations to provide this assistance?

Mr. STEPHENSON. It will be competitive. We have developed the competitive criteria for which they will bid and we have developed the basic program guidance under which grantees will operate.

Senator WEICKER. When will you solicit the proposals for those?

Mr. STEPHENSON. The first group will be coming out in June. The requests probably will be going out in late April. The first selections will begin in June.

CREDIT POOLS

Senator WEICKER. Your budget submission says MBDA is testing the feasibility of establishing a credit pool for minority businesses. What is the status of that study? Are there any findings or results at this point?

Mr. STEPHENSON. It is operating out of our Chicago regional office. What we have done is put together the design which calls for each of several private corporations to submit to a line of credit that will be pooled across the board, and to take those lines of credit and establish them in a number of banks. These credit pools would then guarantee loans for existing business people who have purchasing opportunities either with the Government or with the private sector. We are at a stage now of selecting the actual organization that will begin soliciting the actual guarantees. This, by the way, is a program that has worked in the past. The timing is a lot different, but it was an effective program in New York City in the mid-1960's. I know the program well. I started it.

EXPORT DEVELOPMENT PROGRAM

Senator WEICKER. Your budget submission MBDA-18 says that as a part of your export development program you will identify and assist export capable minority firms which are not presently exporting successfully and assist firms in selling to intermediary organizations that export. What is the present status of this export development program? How does this program work? How many minority firms have you identified and assisted?

Mr. STEPHENSON. We have identified now a little over half a dozen firms. We are at the very embryonic stages of this process. We completed our policy on it and right now we have our regions actively identifying the firms.

I would like to indicate, however, that we do have general business service firms in our system that are receiving assistance in the export area.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have further questions which I will submit to you for response to the record.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WEICKER

General Business Services Program

Has the policy shift to SMSA's created any redistricting of MBDA field and regional offices?

The policy to use SMSAs as the basis for distribution of services has not caused MBDA to redistrict our regional structure.

Have any awards for the GBS program been made for FY 1981?

Yes.

For the record, please provide a list of the projects and the funding levels?

The following is a list of GBS projects which have been awarded in FY 1981:

Recipient	Amount
Alexander Grant & Company	$ 519,000
AVANTE International Systems Corporation	110,000
Boone, Young & Associates, Inc	217,363
Business Development Center of Southern California	1,351,500
Cardinal Management Associates	1,351,500
Chicago Economic Development Corporation	749,000
Coastal Bend Business & Industrial Development, BID, Inc	171,570
Commercial Credit Services Corporation	230,000
Gallegos Research Group, Corporation	255,140
Greater Pittsburgh Business Development Corporation	110,000
Innocept, Inc	1,443,570
Managers Associates, Inc	399,000
Marcon Industries, Inc	470,642
Nelson, Peters and Associates, Inc	165,000
Oklahoma Business Development Center, Inc	152,570
Planning Assistance Consultants, Inc	109,944
Restrepo & Associates	335,000
T. R. McConnell & Co., CPAs	230,000
Total	$ 8,370,799

Also, provide a list of projects to be funded in FY 1982 with the funding levels.

Since the GBS fund allocation process requires that organizations compete for grants within SMSA's, and since the grantee selection process for FY 1982 has not begun, we cannot provide a project listing. We can, however, provide a list of locations for which GBS funds will be allocated in FY 1982. The locations are listed below by SMSA rank from highest to lowest.

Los Angeles-Long Beach, CA
New York, NY-NJ
San Francisco-Oakland, CA
Chicago, IL
Miami, FL
Honolulu, HA
Houston, TX
Washington, DC-MD-VA
San Antonio, TX
Philadelphia, PA-NJ
Dallas-Ft. Worth, TX
Anaheim-Santa Ana-Garden Grove, CA
Detroit, MI
San Jose, CA
San Diego, CA
El Paso, TX
Riverside-San Bernadino-Ontario, CA
Baltimore, MD
McAllen-Pharr-Edinburg, TX
Newark, NJ
Denver-Boulder, CO
St. Louis, MO-IL
Atlanta, GA
New Orleans, LA
Cleveland, OH
Sacramento, CA
Albuquerque, NM
Phoenix, AZ
Tampa-St. Petersburg, FL
Nassau-Suffolk, NY
Corpus Christi, TX
Fresno, CA
Brownsville-Harlingen, TX
Seattle, WA
Kansas City, MO-KN
Memphis, TN
Jersey City, NJ
Austin, TX
Boston, MA
Oxnard-Simi Valley, CA
Norfolk-VA Beach-Portsmouth, VA
Laredo, TX
Indianapolis, IN
Cincinnati, OH-KY-IN
Tucson, AZ
Columbus, OH
Ft. Lauderdale-Hollywood, FL
Pittsburgh, PA
Richmond, VA
Milwaukee, WI
Stockton, CA
Jacksonville, FL
Nashville-Davidson, TN
Bakersfield, CA
Santa Barbara, CA
Salinas-Seaside-Monterey, CA
Greensboro-Winston Salem, NC
Raleigh-Durham, NC
Oklahoma City, OK
Dayton, OH
Louisville, KY-IN
Gary-Hammond-E. Chicago, IN
Portland, OR-WA
Baton Rouge, LA
Birmingham, AL
W. Palm Beach-Boca Raton, FL
Minneapolis-St. Paul, MN-WI
Columbia, SC
Orlando, FL
Buffalo, NY
Charlotte-Gastonia, NC
Charleston-N. Charleston, SC
Beaumont-Port Arthur-Orange, TX
Newsport News, VA
Vallejo-Fairfield-Napa, CA
Tulsa, OK
Jackson, MS
Las Vegas, NV
Toledo, OH-MI
Salt Lake City-Ogden, UT
Mobile, AL
Shreveport, LA
Galveston, TX
Rochester, NY
Paterson-Clifton-Passaic, NJ
Hartford, CT
Lubbock, TX
New Brunswick-Perth Amboy, NJ
Savannah, GA
Little Rock-N. Little Rock, AR
Greenville-Spartanburg, SC
Akron, OH
Long Branch-Ashbury Park, NJ
Wilmington, DL-NJ-MD
Augusta, GA
Omaha, NB-LA
Colorado Springs, CO
Modesto, CA
Pueblo, CO
Wichita, KS

Policy and Market Development Program

You state that the private market penetration continued principally through the National Minority Supplies Development Council. What level of funding do you plan for "Purchasing Councils" for 1982?

Funds in the amount of $1.7 million have been earmarked in FY 1982 for the "Purchasing Council" program which includes funds for both the national and regional councils.

How much of the $3 billion in private sector contracts going to minority businesses are attributable to the Councils?

The entire $3 billion in private sector contracts awarded to minority business during calendar year 1979 was attributable to the national and regional councils through participating member corporations and subsequently reported to MBDA. This information is reported semi-annually and annually, and represents one of the major requirements for corporate membership in the program.

Are you planning any policy changes in the Purchasing Council program for next year?

Yes.

If so, what are they?

Major policy changes were initiated during FY 1981 for the purpose of strengthening the existing program and creating a more accountable structure. Some of the more significant areas are:

- singular funding and direction through the Supplier Development Council, formerly the National Purchasing Council, for the entire program;
- precise and relevant program functions to produce more results-oriented activities including intensified assistance to minority business enterprises and corporate members, education and training, and procurement;
- reporting procedures that elicit more substantive and verifiable information on program results for the activities listed above; and
- strengthen working relationships between the councils and other operating units funded by MBDA.

These actions require some time to assess their impact on improving the program's effectiveness. Both MBDA headquarters and regional staff will monitor and review the program's progress to determine what changes, if any, will be warranted for the subsequent program period.

On MBDA-18, you state that in FY 1982, the policy and market development program intends to increase its accomplishments by supporting trade associations in selected priority business sectors through a refocused minority trade association involvement. Are the trade associations located in the previously mentioned SMSA's?

Trade associations are supported as a result of their business or trade affiliations, not by SMSA. Most associations are headquartered in Washington, D.C.

What are the selected priority business sectors?

MBDA is currently examining its past involvement with minority business and trade associations with a view toward establishing sound policy vis-a-vis future support of minority trade associations. The value of trade associations is well known. However, MBDA's limited resources require that we consider the cost/benefit value of Federal support to these organizations. Concurrent with this examination, we are looking at industries with growth sectors and determining which offer the easiest entry for minority firms. This study will not only identify industries in growth stages but specific requirements for access. Until this study is completed the priority business sectors will not be known, although it is clear that minority banking associations will retain a very high priority.

What were the criteria for establishing the priority business sectors?

We have not established priority business sectors. Our program is designed first to provide general services to existing businesses regardless of sector. However, in terms of directing new ventures or redirecting suitable firms we will indicate those growth sectors that offer the greatest potential.

Your budget submission (MBDA-18) says that as a part of your export development program you will identify and assist export capable minority firms which are not presently exporting successfully and assist firms in selling to intermediary organizations that export. What is the present status of this export development program?

In MBDA's Export Development Program, the Agency is defining the type of assistance minority exporters will require, identifying staff and budget resources to provide that assistance, and developing a first year operational plan. The plan will outline the activities of the assistance effort and provide a mechanism for monitoring its effectiveness.

How does this program work?

The Agency is undertaking a survey of approximately 40,000 minority-owned businesses. Besides general descriptive information on each firm, data on product and market characteristics are also being collected. It is envisioned that the survey will be completed and its results coded for computer manipulation by August, 1981.

The Agency is also negotiating agreements with the International Trade Administration to: (1) develop tailored export marketing programs for selected minority businesses, (2) to hold regional educational seminars on export subjects relevant to minority exporters, (3) to include minority exporters in its WITs network, and (4) to provide general analysis on conditions in foreign markets.

How many minority firms have you identified and assisted?

Preliminary indications show that approximately 15 to 25 percent of the respondents to MBDA's survey are either presently exporting or have products or services for which there is an identifiable foreign market.

General Business Services Program

The General Business Services program (see MBDA 3 and 11) provides existing client firms with direct long-term (the average is three years) management and technical assistance services. For FY 1982, MBDA is requesting a $5.4 million increase for the program. Has MBDA taken any steps to reduce the three-year average of management technical assistance to client firms and does this average age limit the prospects of other minority firms from receiving assistance?

For FY 1982, MBDA is requesting a $1.5 million increase to its GBS program. One of the major objectives of the reorganized MBDA Client Services program is to target meaningful management and technical assistance to small and medium sized firms whose growth will have the greatest impact on the economy. Before the reorganization of MBDA, the degree of assistance was mainly short-term, i.e., accounting, loan packaging and procurement. In recognizing the economic hardships that small businesses have been faced with in recent years, MBDA upon the reorganization undertook to upgrade the quality and depth of assistance to be provided to clients of the General Business Services program.

It was conceived from the onset that the average time for clients to recieve this type of indepth assistance could range anywhere from 1 to 3 years depending on the sophistication of the firm. It is expected that the average should be reduced to approximately 18 months to 2 years. However, clients that are much farther along in the development process would need less time. As the more stable firms leave, other firms can enter.

Policy and Market Development Program

MBDA intends to implement an acquisitions assistance program (see page MBDA-17) that will provide business analytical services to minority entrepreneurs seeking to acquire approximately 15 sizable businesses (e.g., assets in excess of $1 million and annual sales of more than $3 million). What is MBDA's justification for such a program?

Several studies which have been conducted to determine the impact of MBDA's program on the national minority economic situation have been critical of the level of businesses MBDA has assisted. As of 1977, 75% of all minority-owned businesses were under five years old; mostly service oriented. The average annual sales for all firms was less than $50,000. For firms with paid employees, the average annual revenue was approximately $180,000, with 4.7 employees.

In order to foster a program which would have a demonstrable impact on minority business economics, MBDA initiated the acquisition program. The type of venture MBDA contemplates under the program will provide a better profit margin, higher employment and skilled professional management. We envision a need for some form of specialized assistance to tailor solutions for anticipated problems, but we believe the rewards of built-up capital assets from firms with assets in excess of $1 million and annual sales of more than $3 million is beneficial to the total minority community.

Questions Submitted by Senator Hollings

General Business Services Program

MBDA's General Business Services Program is being directed to service larger Standard Metropolitan Statistical Areas (SMSAs) which have greater concentrations of minority firms. Of 236 SMSA's, MBDA has preselected 100 which account for approximately 75 percent of all minority business. Senator Bumpers is informed that the level of MBDA assistance in Arkansas will decrease by $371,000 due to this policy change. Do you have a table comparing the allocation of MBDA's funds by state in 1980 and 1981?

Yes, below is a table which compares General Business Services (GBS) funding by state for FY 1980 with FY 1981.

State	FY 1980	FY 1981
Alabama	$ 454,931	$ 220,000
Alaska	...	...
Arizona	375,690	262,000
Arkansas	482,530	110,000
California	2,113,142	5,848,000
Colorado	615,983	170,000
Connecticut	275,995	110,000
District of Columbia	5,245,308	434,000
Delaware	...	...
Florida	653,500	1,288,000
Georgia	1,421,618	308,000
Hawaii	320,000	522,000
Idaho	...	...
Illinois	822,074	749,000
Indiana	340,000	220,000
Iowa	40,000	...
Kansas	...	...
Kentucky	70,000	110,000
Louisiana	791,679	399,000
Maine	...	...
Maryland	643,334	230,000
Massachusetts	317,546	110,000
Michigan	630,938	387,000
Minnesota	153,585	110,000
Mississippi	610,000	110,000
Missouri	782,500	338,000
Montana	...	...
Nebraska	146,886	...
Nevada	160,000	110,000
New Hampshire	...	...
New Jersey	1,638,311	521,000
New Mexico	635,877	171,000
New York	2,142,587	1,155,000
North Carolina	372,945	330,000
North Dakota	...	...
Ohio	895,046	602,000
Oklahoma	432,670	220,000
Oregon	223,493	110,000
Pennsylvania	1,677,497	427,000
Rhode Island	56,977	...
South Carolina	380,544	220,000
South Dakota	...	...
Tennessee	582,000	233,000

Texas................	2,558,537	2,826,000
Utah..................	121,165	110,000
Virginia..............	701,745	330,000
Washington............	229,000	141,000
West Virginia.........	32,083	...
Wisconsin.............	26,000	110,000
Puerto Rico...........	245,000	595,000
Virgin Island.........	44,528	...
Total...............	$30,463,244	$20,246,000

What impact will the preselection of the 100 targeted SMSAs have on former and potential MBDA clients who are not located in those areas?

Former and potential MBDA clients located outside designated areas may receive the full range of services from grantees by requesting them. MBDA grantees are obliged to provide management and technical assistance services to all MBEs who meet the criteria. We have included the following requirement in the language of the grant GBS documents.

"The primary source of clients to be assisted under a client services award shall be located within the designated geographic area. Clients outside the designated area may request and receive technical assistance from the recipient provided there is staff time available."

Has the policy shift to SMSAs created any redistricting of MBDA field and regional offices?

The policy to use SMSAs as the basis for distribution of services has not caused MBDA to redistrict our regional structure.

If not, is it safe to assume that the workload at some offices is very heavy as opposed to light in others?

Currently, we are conducting an analysis of the regional program workload. When the analysis is completed, an assessment of the distribution of the number and complexity of grants will be made and appropriate administrative steps will be taken.

The General Business Services Program provides existing client firms with direct long-term (the average is three years) management and technical assistance services. For FY 1982, MBDA is requesting a $5.4 million increase for the program. Has MBDA taken any steps to reduce the 3-year average of management and technical assistance to client firms and does this average age limit the prospects of other minority firms from receiving assistance?

For FY 1982, MBDA is requesting a $1.5 million increase to its GBS program. One of the major objectives of the reorganized MBDA Client Services program is to target meaningful management and technical assistance to small and medium sized firms whose growth will have the greatest impact on the economy. Before the reorganization of MBDA, the degree of assistance was mainly short-term, i.e., accounting, loan packaging and procurement. In recognizing the economic hardships that small businesses have been faced with in recent years, MBDA upon the reorganization undertook to upgrade the quality and depth of assistance to be provided to clients of the General Business Services program.

It was conceived from the onset that the average time for clients to recieve this type of indepth assistance could range anywhere from 1 to 3 years depending on the sophistication of the firm. It is expected that the average should be reduced to approximately 18 months to 2 years. However, clients that are much farther along in the development process would need less time. As the more stable firms leave, other firms can enter.

Policy and Market Development Program

MBDA, as part of its Export Development Program will identify and assist export capable minority firms which are not presently exporting to successfully export, and assist firms in selling to intermediary organizations that do export. How does this program differ from the activities of the International Trade Administration?

MBDA's program to promote exports among minority businesses is supplemental to, rather than duplicative of, the services available through the International Trade Administration (ITA). This is demonstrated by the interagency agreement being concluded with ITA under which its chartered services will be provided to minority exporters. Additionally, MBDA serves as a coordinating mechanism through which service flows from a variety of public and private sources to reach the minority business community. This approach is essential if the required intensity of support needed by the Agency's constituents is to be provided.

Nonetheless, MBDA remains sensitive to the need to avoid unnecessary duplication among Federal agencies, and will remain committed to a high degree of cooperation with other agencies. It is our view that this is the best way of maximizing service delivery to the minority business community.

What level of expertise does MBDA have in export development?

The source of MBDA's export development expertise is in the qualifications of its Export Development staff which is headed by Dr. Arthur Bailey who has graduate training in both International Economics and International Relations. Additionally, Dr. Bailey was an official memeber of the United States negotiating team to the Tokyo Round of Multilateral Trade Negotiations held in Geneva, Switzerland. As such, he directly participated in the negotiation of increased U.S. access to markets in the European Community, Canada and Japan. This experience provided him with an intimate familiarity with the requirements for successful export participation in this country's principal foreign markets.

As MBDA's Export Development Program becomes fully operational, it is anticipated that additional private sources of expertise will be made available to the effort through consultant services. Given the essentially coordinating role that MBDA expects to play under the program, it is our view that the present level of expertise within the Agency is sufficient.

In the past MBDA has indicated that is efforts are in the private sector while SBA's responsibilities are to assist minority firms in gaining Federal procurement. How then does MBDA's specialized marketing program targetted for 5 selected Federal agencies differ from SBA's 8(a) program?

There seems to be a misunderstanding of SBA's responsibilities versus those responsibilities of MBDA. MBDA's efforts are not concentrated solely in the private sector. Instead, MBDA is concerned with the public, as well as the private sector.

MBDA's specialized marketing program for 5 selected Federal agencies will be done in markets where minority firms have known capabilities. These firms will not be 8(a) firms (SBA's minority non-competitive contractors program) but minority owned firms which have some capability to compete with other small business firms. SBA's 8(a) program constituted about 43% of the total Federal awards to minority firms. MBDA seeks to significantly increase the amount of direct Federal contracts and subcontracts to prime Federal contractors. SBA contract awards are made to minority businesses via the 8(a) program on a non-competitive basis.

MBDA intends to implement an acquisitions assistance program that will provide business analytical services to minority entrepreneurs seeking to acquire approximately 15 sizable businesses (e.g., assets in excess of $1 million and annual sales of more than $3 million). What is MBDA's justification for such a program?

Several studies which have been conducted to determine the impact of MBDA's program on the national minority economic situation have been critical of the level of businesses MBDA has assisted. As of 1977, 75% of all minority-owned businesses were under five years old; mostly service oriented. The average annual sales for all firms was less than $50,000. For firms with paid employees, the average annual revenue was approximately $180,000, with 4.7 employees.

In order to foster a program which would have a demonstrable impact on minority business economics, MBDA initiated the acquisition program. The type of venture MBDA contemplates under the program will provide a better profit margin, higher employment and skilled professional management. We envision a need for some form of specialized assistance to tailor solutions for anticipated problems, but we believe the rewards of built-up capital assets from firms with assets in excess of $1 million and annual sales of more than $3 million is beneficial to the total minority community.

In FY 1982, the Policy and Market Development program intends to increase its accomplishments by supporting Trade Associations in selected priority business sectors. Are these Trade Associations located in the previously mentioned SMSAs and what criteria is used to establish priority business sectors?

Trade associations are supported as a result of their business or trade affiliations, not by SMSA. Most associations are headquartered in Washington, D.C.

We have not established priority business sectors. Our program is designed first to provide general services to existing businesses regardless of sector. However, in terms of directing new ventures or redirecting suitable firms we will indicate those growth sectors that offer the greatest potential.

Will the Reagan Administration submit legislation authorizing this program?

The Administration has not yet made a decision on possible MBDA legislation.

QUESTIONS SUBMITTED BY SENATOR BUMPERS

General Business Services Program

Because of a change in policy within your agency for calendar year 1981, in the area of general business services you will be focusing on the 90 SMSA's with the highest concentrations of minority businesses. The Little Rock - North Little Rock area is the 90th one, and no other areas in Arkansas will be served. What is the justification for this policy shift?

The rationale for the redirection of the General Business Services Program was based on: the uneven distribution of fiscal resources in past years; disparities in the number of clients served and the type of assistance received by clients from different funded organizations; and the disparity in the size of firms assisted by different funded organizations. After careful considerations for a common sense plan for the most effective utilization of its limited resources, MBDA decided to rank SMSAs throughout the country by the number of minority businesses located in each, rather than on the basis of total minority population. The SMSA plan currently allows for service centers to be located throughout the Nation in 90 SMSAs, with the highest concentrations of minority businesses.

Your change in policy leaves rural areas and small cities and towns without this service. How can this be justified as a matter of federal policy?

The intent and focus of the SMSA allocation plan is to locate MBDA service centers where the majority of the minority businesses are situated and not to preclude services from being provided to smaller cities and rural areas. No area of the country is left unserved. However, it may entail a businessperson going to a metropolitan area for service, even in a different state. For example, Eastern Arkansas can be serviced by the office in Little Rock, and some Western Arkansas clients who are located close to Memphis can commute to that office. However, services will be limited to the extent MBDA program resources can cover the costs.

Other Client Services Program

What other kinds of services do you provide other than general business services, and will the rural parts of Arkansas be eligible for them? How will the people know about these *other services? Specifically, what kinds of services will be available to the minority person who wants to start up a small business in rural Arkansas?*

Other Client Services Programs offered by MBDA's Enterprise Development Division are the Specialized Consultant Services (SCS) Program and the Industry and Technology Development Program.

The SCS Program provides management and technical assistance to larger minority firms whose needs are too diverse and complex to be met through the regular network of funded organizations. These services are provided through six contractors who are on a retainer basis for the six MBDA Regional Offices. The majority of this program's business comes by way of referrals from MBDA's Regional Offices and funded GBS organizations and by word of mouth. The SCS program was designed to complement the GBS network.

The Industry and Technology Development Program through Technology Commercialization Centers (TCC) evaluates, develops and promotes products and opportunities of minority business firms through a consortium of both government and industry. The consortium provides coordinated access to sources of marketing, financing, new or existing technologies, adaptive engineering and technical assistance tailored to meet the needs of minority firms/entrepreneurs. The process involves a matching of minority firms/entrepreneurs with new or existing appropriate technology.

Currently, there are eight technology commercialization centers. The nearest one to the state of Arkansas is in Durant, Oklahoma.

TCCs do not have budgets for expansive outreach efforts. The majority of their business comes by way of referrals from MBDA Regional Offices, and funded organizations and word of mouth.

MBDA Client Services programs previously mentioned are geared to assist minority businesspersons who aspire to start businesses in growth areas of the economy or with technology-based business opportunities.

SUBCOMMITTEE RECESS

Senator WEICKER. The subcommittee will recess until Tuesday, April 7, at 9:30, when we will hear from the U.N. Ambassador Kirkpatrick and the international organizations and the Board for International Broadcasting.

[Whereupon, at 11:25 a.m., Wednesday, April 1, the subcommittee was recessed, to reconvene at 9:30 a.m., Tuesday, April 7.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

TUESDAY, APRIL 7, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:35 a.m., in room S–146, the Capitol, Hon. Lowell P. Weicker, Jr. (chairman) presiding.

Present: Senator Weicker.

UNITED NATIONS

STATEMENT OF AMBASSADOR JEANE KIRKPATRICK, PERMANENT U.S. REPRESENTATIVE TO THE UNITED NATIONS

ACCOMPANIED BY:
- MARION V. CREEKMORE, JR., ACTING ASSISTANT SECRETARY FOR INTERNATIONAL ORGANIZATION AFFAIRS
- RICHARD V. HENNES, EXECUTIVE DIRECTOR
- CHARLES E. WATKINS, BUDGET OFFICER
- GEORGE F. SADDLER, COUNSELOR FOR RESOURCE MANAGEMENT, U.S. MISSION TO THE UNITED NATIONS

PREPARED STATEMENT

Senator WEICKER. The subcommittee will come to order.

We have before us Ambassador Jeane Kirkpatrick, permanent U.S. Representative to the United Nations. Your statement will be inserted in the record.

[The statement follows:]

STATEMENT OF AMBASSADOR JEANE J. KIRKPATRICK

Mr. Chairman, it is a privilege to be here this morning to discuss with you our budget request for fiscal year 1982 for international organizations and conferences. The request is for $564 million, an increase of $47 million over the comparable fiscal year 1981 appropriation. This $47 million reflects some increased U.S. assessments to international organizations, and wage and price increases for international conferences.

I use the word "discuss" advisedly. What I want to do is sketch for you in very broad strokes my views and that of the Reagan administration concerning this Nation's obligations under the U.N. Charter, and to the U.N. generally. Then, Mr. Chairman, with your consent, I would like to have Marion Creekmore, Deputy Assistant Secretary of State for International Organizations, provide a summary of our budget request—breaking it out for you in somehwat greater dollars-and-cents detail. I am accompanied this morning also by Richard Hennes, Executive Director of IO, Charles Watkins, IO's Budget Officer, and George Saddler, Counselor for Resources Management at the U.S. Mission in New York. All of us are ready to answer any questions you may have.

As you know, I have been at the United Nations for only 2 months and, although I have worked very hard at learning this job, there is much I do not yet know about the organization to which I am now assigned and the environment in which it functions.

I have, however, formed some views about what the United Nations is, functionally speaking, and waht purposes it can serve. I shall comment briefly on my preliminary views. First, it seems clear to me that the United Nations is, to an extent that I had not fully understood, a major center for international politics in which representatives of all the diverse nations in the world meet and discuss all the world's diverse problems. The United Nations is a place in which people meet to discuss with one another and attempt to deal with an inconceivable range of problems. It is a major arena of international decisionmaking in which the range of interests, principles, voices, and languages seem from time to time to produce the kind of cacophony which William James describes as characteristic of the world itself. Obviously, we need to be involved in these interactions. Obviously, we desire to have our principles and our interests and those of our friends and allies fully represented in these interactions. Equally important is our need to be present merely in order to listen to all that is being said in this center of international activities concerning the problems we confront around the world. It is a place, therefore, not only where we work; but also it has irreducible value for those of us charged with responsibility for making and implementing U.S. foreign policy.

Second, the United Nations is important to us not only because it is an arena in which problems are solved but because it is regarded by the leaders of many nations as an instrument for problem solving. A real respect for the well-being of mankind, therefore, requires that we participate as responsible members in what is frequently called the "international community."

Third, the institutions of the United Nations serve frequently as instruments for accomplishing some of the common pruposes of its member nations. Examples of these common purposes are many. You are as familiar with them as I am—including the range of the "specialized agencies" such as UNDP, WHO, UNHCR, WMO, and a dozen other such agencies. Through these agencies the United Nations has contributed to reducing disease and hunger and to aiding development of desperately poor nations, and extending the frontiers of science and cooperation on scientific matters.

Fourth, the United Nations can sometimes and under some circumstances help to preserve or restore peace. This peacemaking function is, of course, enormously important. The fact that it sometimes fails does not diminish the value of its successes, complete or partial. Because it is an organization that comprises all the nations of the world, the United Nations cannot appropriately be correctly viewed as an instrument of U.S. foreign policy. It is, however, an arena through which some of the goals of the U.S. foreign policy can be achieved. It does not replace bilateral relations. It does not replace regional organizations. It does, however, supplement these in the pursuit of the goals of U.S. foreign policy. Its purpose is not to seve our distinctive national purpose. Its purpose is to serve those purposes we share with others. The United Nations is a place where a good many compromises are hammered out. Consensus-building seems frequently to be its principal activity. I believe it is worth the United States' money and effort to participate in those humanitarian purposes served by the United Nations, to participate in the consensus-building activities which take place there and to attempt to persuade that body to focus its efforts and energies on programs which achieve productive, practical, humane results beneficial to all. I believe, too, we should discourage those of its negative activities which exascerbate conflict among peoples.

INTRODUCTION OF ASSOCIATES

Senator WEICKER. Ambassador, why don't you introduce those who are with you?

Ambassador KIRKPATRICK. Accompanying me this morning, Senator Weicker, are Marion Creekmore, who is the Deputy Assistant Secretary of State for International Organizations and Richard Hennes, who is the Executive Director of the State Department's International Organizations; Charles Watkins, who is the Budget Officer, and George Saddler, the Counselor for Resource Management at the U.S. Mission to the United Nations in New York, a senior member of my senior staff.

I would like to say, first of all, it is a privilege to be here. As you know, we have requested a total of $564 million which constitutes an increase of $47 million over comparable fiscal year 1981 appropriations. This $47 million will be some increase to U.S. assessments to international organizations, some wage and price increases for U.S. participation in international conferences.

I would like to say just a few words about some of the tentative conclusions which I have formed in the all too brief period that I have been at the United Nations—I have only been there 2 months, as you know—about why it is not only worth our time and money to participate as full members of the United Nations, but why it is really very important that we do so. I might say these 2 months have been a very intensive learning process for me, which learning process I expect will go on intensively for the foreseeable future.

I do not think I will change the views that I have so far formed about the important functions of the United Nations for us, but I think they will be supplemented and refined.

There are, it seems to me, several major functions or reasons why the United States should participate in significant ways in the United Nations.

First of all, because the United Nations is a major center of international politics it is one of the principal places in which international politics is conducted. It is a place in which people meet, discuss, and deal with every problem in the world. The United Nations is an arena in which decisionmaking takes place.

I have said that I did not know how complicated the job I was taking was until I got there and came to realize some United Nations Ambassadors are charged with dealing with all the countries in the world on all the problems in the world.

All the voices, all the languages, all the peoples of the world are found there and frequently it resembles a blooming, buzzing confusion, which is the way William James described the universe itself.

It is obviously a place which is a center of international politics; a place that we need to be in order to make certain that our principles, our interests, and our friends are represented and protected there.

The second reason I think is important for us to participate in a significant way, is not what the United Nations is so much but what it is regarded as being. And it is regarded by many of the nations of the world and peoples of the world as a major arena. It is not only a major arena, it is thought to be a major arena. I think, to quote our own Declaration of Independence, "a decent respect for the opinions of mankind" requires that we participate as responsible members of what they continually call up there the international community.

A third reason that I think it is important for us to participate fully is that the institutions of the United Nations, especially some of the voluntary institutions, serve very effectively to accomplish some of the common purposes of mankind. Some of the voluntary agencies undertake tasks which virtually all people agree on, like the desirability of eradicating smallpox, or hunger, or tuberculosis. The voluntary agencies of the United Nations in particular serve frequently as instruments for accomplishing those common purposes. We share those interests and we need to participate.

A fourth reason we ought to participate as full members is that the United Nations has sometimes, under some circumstances, in some places, helped to preserve or restore peace. The fact that it cannot do that all the time and under all circumstances doesn't mean that it is not important to support the efforts of the United Nations where it can contribute to preserving or restoring peace. Peacekeeping instruments in the United Nations are not always successful in their missions but the effort at peacekeeping goes on continually outside the arenas that are specifically designated for peacekeeping.

I think it is important for us to understand, as I am sure you and your committee do, that the United Nations is not a tool of U.S. foreign policy. It is one of the arenas through which we attempt to accomplish our foreign policy goals. It cannot replace bilateral relations, it cannot replace regional organizations and regional initiatives, but it is, I think, a very important supplement or complement to those.

The United Nations, like the U.S. Congress, is a place where politics takes place, it's a place where compromises are hammered out. Building, seeking, constructing consensus is, I think, a principal, if not the principal activity of that body.

I think that it is worth our time and money, and I think that we ought to do our best to support those activities which achieve human purposes that we share and we ought to do our best to make clear to all the nations who meet there—there are more nations who meet there, of course, than there are representatives even in Washington—that we do, indeed, desire to be and to participate as decent, civilized, humane, responsible members of the world community.

Thank you, Senator.

Senator WEICKER. Thank you very much.

PREPARED STATEMENTS

Mr. Creekmore?

Mr. CREEKMORE. Thank you, Senator.

I have submitted for the record several statements. With your permission, I will summarize those and limit my comments to more facts and figures, numbers that are part of this request.

Senator WEICKER. The statements will be inserted in the record.

[The statements follow:]

STATEMENTS OF MARION V. CREEKMORE, JR.

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before this committee in support of our request of $494,591,000 for US assessed contributions to international organizations. These contributions may be grouped into five general categories:

United Nations	$146,451,000
Specialized agencies	224,633,000
Inter-American organizations	67,219,000
Regional organizations	47,434,000
Other international organizations	8,854,000
Total	$494,591,000

Total increases of $194,650,000 are partially offset by decreases of $160,000,000 resulting in a net increase of $34,650,000 for FY 1982. Of the increases, this request includes $21,407,000 for 1980 arrearages and $52,243,000 for 1981 shortfalls. Of the $580,941,000 estimated United States share of 1982 assessments $420,941,000 is in this request. There is a proposed deferral of $160,000,000 of the estimated United States share of 1982 assessments to 1983. This deferral in the FY 1982 request of $160 million reflects the first step of a four year process which will change the timing of the payment of U.S. assessed contributions to fifteen international organizations. When the transition to this new payment cycle is complete, the United States will be paying its full annual contribution in the fourth quarter of the organizations' calendar year budgets, that is in the first quarter of the subsequent U.S. fiscal year. This new payment cycle should help create a fiscal environment within the organizations which will impress on them the United States concern about their increasing budgets. The new cycle will also allow for greater accuracy in future budget estimates since the Department's budget request will be prepared after the organizations' budgets have been adopted rather than in advance as is the current practice. As this shift of payment cycle gets underway, the Department intends to examine rigorously U.S. participation in all organizations, weighing the advantages and disadvantages of continued membership.

For the United Nations and its specialized agencies, there is a total increase of $159,597,000 primarily composed of six major elements: the United Nations; the United Nations Educational Scientific and Cultural Organization; the World Health Organization; the Food and Agricultural Organization; the International Labor Organization; and the International Atomic Energy Agency. These increases are attributable to prior years arrearages and shortfalls, inflation, adverse foreign currency fluctuation, other nondiscretionary causes and limited program growth. These increases are partially offset by a deferral of $124,223,000 of the estimated calendar year 1982 assessments of the United Nations and its specialized agencies to FY 1983,leaving a net increase for the U.N. and its specialized agencies of $35,374,000 for FY 1982.

Included in the $67,219,000 for the Inter-American organizations is an increase of $21, 578,000. This is composed of $7,338,788 for a 1980 arrearage and 1981 shortfall for the Organization of American States, and other increases of $14.3 million attributable to inflation and limited program growth. More than offsetting this increase is a deferral of $24,579,000 of the estimated calendar year 1982 assessments of Inter-American organizations to 1983. This results in a net decrease of $3,003,000 for Inter-American organizations in FY 1982.

A total of $47,434,000 is included in this request for assessments of the regional organizations. Increases of $12,743,000 are attributable to prior year shortfalls, inflation and increased . activities of the International Energy Agency. Partially offsetting this increase is a deferral of $10,034,000 of the calendar year 1982 estimated assessment of the Organization for Economic Cooperation and Development which is deferred to FY 1983. This results in a net increase of $2,709,000 for regional organizations in FY 1982.

$8,854,000 is requested for the assessments of 22 other international organizations. This includes $668,000 for increased assessments which is more than offset by deferring $1,164,000 of the estimated calendar year 1982 assessment of the General Agreement on Tariffs and Trade to FY 1983. This results in a net decrease of $430,000 for these other international organizations in FY 1982.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions which you or members of the Committee may have.

INTERNATIONAL CONFERENCES AND CONTINGENCIES

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you to support the fiscal year 1982 request for the International Conferences and Contingencies appropriation.

This appropriation funds official U.S. participation in multilateral intergovernmental conferences, contributions for the U.S. share of expenses of new or provisional international organizations, and participation of U.S. Congressional Groups in Interparliamentary Unions. The fiscal year 1982 request is for $8,277,000 in new budget authority, of which $7,345,000 is for conference participation, $692,000 is for contributions and $240,000 is for U.S. Congressional Groups' participation in Interparliamentary Unions.

The fiscal year 1982 request reflects an increase of $1,277,000 in new budget authority for this no-year account which is caused by the expenditure of the 1980 carryover of $943,000 in 1981 and net increases of $334,000 due to inflation and increased funding requirements for new and provisional organizations.

Included in our request is $1,653,000 for continued participation in the Mutual and Balanced Force Reductions Negotiations (MBFR). Also included is $697,100 for participation in the United Nations General Assembly.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions which you or Members of the Committee may have.

CONTRIBUTIONS FOR INTERNATIONAL PEACEKEEPING ACTIVITIES

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before the committee in support of our request of $60,938,000 for contributions for International Peacekeeping Activities. These funds provide the United States share of the costs of the United Nations Disengagement Observer Force (UNDOF) on the Golan Heights, and the United Nations Interim Force in Lebanon (UNIFIL) in Southern Lebanon. These peacekeeping forces promote our national interest in peace and stability in the Middle East.

UNDOF and UNIFIL were established by the United Nations Security Council in 1974 and 1978. UNDOF monitors the Disengagement Agreement on the Golan Heights. UNIFIL has the mandate of keeping the peace in southern Lebanon with the ultimate objective of restoring the authority of the Lebanese Government there. From the outset, these forces have been expenses of the United Nations to be borne by all members in accordance with Article 17 of the UN Charter.

In 1980 the United Nations General Assembly raised the level of reimbursement to the troop contributing countries. This request of $60,938,000 reflects an increase of $10,938,000 to cover the United States share of the increased reimbursement to the contributors for FY 1981 and FY 1982.

Mr. Chairman, that completes my statement. I would be glad to respond to the Committee's questions.

BUDGET REQUESTS

Mr. Creekmore. As Ambassador Kirkpatrick mentioned, our request is for $564 million for fiscal year 1982. The request will be distributed in the following way: $494,591,000 for contributions to international organizations; $60,938,000 for contributions for international peacekeeping activities and $8,277,000 for international conferences and contingencies.

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

The $494,591,000 request for contributions to international organizations is for the United States share of assessed contributions to the organizations. It includes $21,407,000 for 1980 arrearages and $52,243,000 for 1981 shortfalls. Of the $580,941,000 estimated U.S. share of calendar year 1982 assessments, $420,941,000 is in this request. This reduction in the fiscal year 1982 request of $160 million reflects the first step of a 4-year process which will change the timing of the payment of United States assessed contributions to certain international organizations.

NEW PAYMENT CYCLE FOR CERTAIN CONTRIBUTIONS

When this transition to the new payment cycle is complete, the United States will be paying its full annual contribution in the fourth quarter of the organization's calendar year budgets, that is in the first quarter of the subsequent United States fiscal year.

This new payment cycle should help create a fiscal environment within the organizations which will impress on them the United States' concerns about their increasing budgets. The new cycle will also allow for greater accuracy in future budget estimates since the Department's budget request will be prepared after the organizations' budgets have been adopted, rather than in advance as is the current practice. As this shift of payment cycle gets under way, the Department intends to examine rigorously U.S. participation in all organizations, weighing the advantages and disadvantages of continued membership.

CONTRIBUTIONS TO INTERNATIONAL PEACEKEEPING ACTIVITIES

The $60,938,000 for contributions to international peacekeeping activities is for the United States' assessed share of the anticipated cost of the two United Nations peacekeeping operations. It includes a 1981 shortfall of $5,469,000 which resulted from increased reimbursements payable to the contributing countries as authorized by the U.N. General Assembly.

INTERNATIONAL CONFERENCES

The $8,277,000 requested for international conferences and contingency is to provide $7,345,000 for the U.S. participation in international conferences, $240,000 for participation in the Interpol member unions and contributions and $692,000 go for the International Rubber Organization, the International Tin Council, the International Wheat Council and the U.N. Memorial Cemetery Commission.

Mr. Chairman, that concludes my statement.

We will be happy to answer any questions you have.

NEW PAYMENT CYCLE

Senator WEICKER. I would like to review, again, if we could, this new form of payment adopted by the administration.

As I understand it, in the past, you used to base the budget request at the State Department on estimates, is that correct?

Mr. CREEKMORE. That is correct. In most cases, there would be a few organizations which had completed their budget process, but most would have not at the time we make our request to Congress.

Senator WEICKER. Now what are we going to do? Describe to me what the new policy is going to be.

Mr. CREEKMORE. Yes, sir.

Under the new policy, we will, over a 4-year period, change that process so that we will be seeking appropriation of U.S. contributions during the last quarter of the calendar year of selected organizations rather than in the quarter preceding the calendar year of these organizations.

Senator WEICKER. How is this going to impact on the various United Nations organizations? Let's take, for example, the World Health Organization.

Mr. CREEKMORE. Obviously there will be some difficulties, but we don't think the difficulties are unmanageable. Under the present process, although we receive the appropriation prior to the calendar year of the organization, we stagger our payments—usually four payments throughout the year. What we will be doing under the new system, after the 4-year transition period, is making the entire payment during the last quarter of that calendar year. There will be some cash flow difficulties for the organizations, but we think this is a process that we need to go through, particularly in a time of budgetary restraint. We believe that it is important that we do on the international side some of the same things in terms of budget restraint that we are trying to do domestically.

SOUTH AFRICA

Senator WEICKER. Madam Ambassador, I would like to touch upon the subject of South Africa. From what I have read, you have had some contacts with the South African military, as reported in the press. Considering the rather sensitive balance that is involved in that situation both internally and in their relationships with the United States, do you believe this is the type of meeting that is particularly helpful to the cause of the United Nations, which is getting people together?

Ambassador KIRKPATRICK. I would be very happy to address that question, Senator Weicker. As you know, this administration has had its whole international policy under review since we came into office. There has been an effort to try to address the problems of Africa as a whole and take a look at how the problems are related to our responses to them, and the United Nations is one of the important arenas in which African policy is expressed and articulated.

As you know, I also participate in policymaking in the State Department, Cabinet and National Security Council. In all those roles as a participant in the policymaking process as well as Ambassador to the United Nations, I have been concerned with trying to inform myself thoroughly about various aspects of our African policy.

Now, as a scholar, I developed a view that the very best possible way to inform one's self about a subject is to listen to participants who themselves share different points of view, and I have always made it a point to try to listen to people, very different kinds of people with very different kinds of views.

Since I have been in this administration, I have listened to a great many people, talked but mainly listened, actually, to a great many representatives of African nations, including Foreign Ministers of Botswana, Nigeria and Ambassadors of Zambia, Uganda, Swaziland—a good many others, from the front line states, from Southern Africa, from Namibia, et cetera. It was precisely in the course of this effort to inform myself by listening to different people and different points of view that I met with the South African military officers to whom you refer in a most explicitly nonclandestine meeting.

I think I decided the definition of a secret meeting was one not announced in the Washington Post the day before. None of my meetings have been. It was in no sense a clandestine meeting. They were described to me as experts on strategic concerns. I was approached and asked if I would be willing to meet with them. I said yes, and did.

I think that I was very surprised by the fact that the meeting was ever regarded as clandestine. I was surprised that the person with whom I met turned out to be a General of the South African Military Intelligence. I did not know that was who he is. I would argue in defense of myself that if the U.S. Embassy in South Africa didn't know who he was, it is hardly surprising that I didn't know who he was since they have a great many more resources for identifying South Africans than I do.

I think it was an interesting meeting and it was, in fact, a useful part of my general efforts to inform myself. I followed it, already scheduled in my agenda, with a meeting of Bishop Tutu, who is also a South African and, of course, one of the leaders of the civil rights movement in South Africa. That is, I think, all I have to say about that.

Senator WEICKER. I agree with you, you should get your information from all sides. I was wondering whether or not you have any opinions on that situation in South Africa.

Ambassador KIRKPATRICK. I have a lot of opinions.

Senator WEICKER. I would like to hear them.

Ambassador KIRKPATRICK. Many of them were formed before I came to the United Nations.

SITUATION IN NAMIBIA

Senator WEICKER. How do you feel about the situation in Namibia, Southwest Africa?

Ambassador KIRKPATRICK. I think we have some multiple goals, should have some multiple goals. I think we should have an irreducible commitment to independence in Namibia. Trusteeship, or colonialism by any name is obviously inappropriate to our times. We ought to support fully an independent Namibia. I think we would desire also a democratic Namibia with some sort of stability insofar as stability is possibly achieved in this difficult world. I think we would not want a Namibia that featured just one man, one vote, one time, but provided some sort of framework for continuing autonomy and democratic government for the Namibians. I think also we want a solution which will not contribute either by accident or deliberate design to growing Soviet strength in that region, which is quite serious, too.

These are the principal factors which we must try to balance in a solution. Obviously for a solution to be successful, to be a solution, it will have to be broadly acceptable, not only to the Namibian people, but to their neighbors, including the frontline states and South Africa. Collaboration of all those countries will be required. This is what we have to try to seek.

Senator WEICKER. What are we doing? What is the United States doing vis-a-vis Namibia to combat the growing Soviet influence in this general area of the world and particularly as far as Namibia is concerned?

Ambassador KIRKPATRICK. I have been saying we are reviewing the problem. I think we are in a position now to say we are working on the problem. We have in the administration completed the first phase of our review, as I am sure you know. I think Assistant Secretary-designate Chet Crocker was on the Hill yesterday talking about this subject. We have completed the first phase of our review. We have formed some tentative hypotheses about how to approach the problem, and Crocker is about to depart, I think, today for an extended tour in Africa of all the relevant states, after which he will meet with our European allies in the contact group. He will present them our ideas, and he will get their responses. Then we go back to the drawing board and try to take all that into account in the finalization of our policy. That is what we are trying to do.

Senator WEICKER. But what do you think we should do in Namibia itself? What can we do, as far as the Namibians are concerned, to influence them to look to this nation rather than the Soviets?

Ambassador KIRKPATRICK. First of all, I think we have to follow the principle, the Hippocratic oath, at least do no harm. We need to be very careful we don't do any harm by our policies there.

Second, I think, we ought to try with our allies in the contact group to devise some sort of a constitutional framework on the model of the Zimbabwe solution, which will provide some sort of guarantees for continued democratic control of Namibia by Namibians.

Third, I think we can try to persuade the South African Government to collaborate on a solution.

Fourth, I think we can try to the best of our ability to persuade the frontline states to accept a solution that takes account of our concerns about Soviet penetration as well as concerns about an independent democratic Namibia. We can try to use our influence and our ingenuity to devise with our friends and with the parties concerned a constitutional framework which might help the Namibians solve their problems.

EDUCATIONAL AND CULTURAL EXCHANGES

Senator WEICKER. Let me tell you a story. About 6 months ago, I had occasion to visit Cuba. During the course of that visit, I visited what used to be the Isle of Pines and is now called the Isle of Youth. About 75 senior high school complexes are spread throughout the island; 60 of them serve young Cubans. About 15 of them, each a high school, have within their complex population of a nation, another nation. I happened to visit one that was totally devoted to the Namibians, 600 of them. All of them getting their education courtesy of Cuba and the Soviet Union. Here we have 600 young people, all of whom speak English—that is the native language—who, upon graduation, will go back to Namibia and become the leaders of that nation. While you are reviewing the situation, I would suggest to you that the play is well on, and I wonder whether or not—all I can think to myself is what role is my nation playing in preparing these young people. Of course, the answer is zero. We worry about Cuban troops in Ethiopia, Angola, and I suggest to you Africa probably will swallow them up like it does everybody else. But the real threat are these 600 young people, all of whom don't have the foggiest idea what the policy of this nation is toward them and toward the blacks in Africa, more particularly South Africa and, indeed, I would say probably hold a rather negative view as to what American policy is all about.

Now, I just don't think it is great to jump up and down and yell anti-Communist slogans. I think it is far more important to deal with the world as it is today and to deliver to that world what the world seeks. This isn't always American arms and military intervention; but, rather the tools with which to establish themselves as a nation and give to a quality of life that is present around them.

I tell you this story because to me it is being repeated over and over again in Central America, in South America, in the Caribbean, in Africa. I just think we are missing the boat. The battle there isn't going to be an open, armed confrontation with the Soviet Union. This is a battle for the people's minds, and our policy is one of default, default at this point in time. I don't even want to get to the larger issue as to how we possibly can support a minority government. That is the large issue. I think we had better get cracking on that, also.

The Namibian situation is certainly one that is well within our grasp in the sense of our playing a positive role.

Now, I would like to have you comment because that is the situation. If you have not known about it, I thought I should tell you about it because that is where the problem is going to come from. It is so frustrating to an American Senator to see this going on without us even competing, we are not even competing. I hope they get the review over with, and I hope you invite 600 Namibians over here to go to the University of Maryland, Harvard, Yale, and everywhere else, and send them back there as the means with which you are going to do something about Soviet influence in that area of the world.

Ambassador KIRKPATRICK. I will be delighted to comment, if I may.

I would like to begin by saying that I believe, myself, and have written, spoken and reiterated that the educational, cultural exchange programs are the most important investment in foreign policy dollars that the United States can possibly make. I could not more fully agree with you that military programs are like Band-Aids that one puts on problems, which problems are almost invariably rooted in culture and socialization, in training and educational programs.

You know as well as I know that the educational and cultural programs this country has long sponsored have been dramatically overused in the last decade. I have reported that at every possibility I can. I think our information programs have been hampered, cribbed, crabbed, and constrained in ways that render them much less effective than they should be. I could not agree more fully with you that these instruments of foreign policy deserve our support, they ought to be expanded and utilized with more imagination. I am aware of the Isle of Youth of Cuba. I don't think I have met anyone who has been there, in fact, but I am aware of it. We do have educational programs for Namibian youth and Namibian younger professionals, and so forth, whom we fund through the United Nations, as a matter of fact.

Senator WEICKER. Madam Ambassador, the International Communications Agency budget for education and cultural affairs, with respect to Namibia is zero funded this year.

Ambassador KIRKPATRICK. No, we participate in the Namibia educational programs through the United Nations, through voluntary agencies.

Mr. CREEKMORE. Through voluntary contributions.

Senator WEICKER. Not through our own agency.

Ambassador KIRKPATRICK. From the U.N. Institute for Namibia. I agree with you, we should. That is a bilateral diplomacy. In my arena, we are doing something.

Senator WEICKER. Madam Ambassador, I am delighted with what you have said. You started off by saying, that you sit in on determinations of foreign affairs, that you are a member of the National Security Council, the Cabinet, et cetera. I suggest you get your point of view across because it might be somewhat different from someone else's.

Ambassador KIRKPATRICK. I am working on it.

Senator WEICKER. We are cutting, as you know, the funding again for the very thing you believe in. It has been going on in the last decade. There is a tremendous role for this nation to play with the tools that I think we have the best of.

Here are people where there is not even a language barrier. Yet we are going to lose it, not because of their particular responses within that nation. That is not where it is going to be lost, as much as it is going to be lost by the fact that the younger Namibians are following the Soviets. I would hope you speak out loudly on this. You are right. You correctly say these efforts are a Band-Aid. Here is where we have played no role. I realize sometimes philosophies get in the way, but I think it is a tremendous opportunity for this administration to go ahead and play a very positive role in this and many other areas of the world.

Ambassador KIRKPATRICK. I will be delighted to carry that message back to my colleagues.

Senator WEICKER. You do it, and when you get in trouble in the press with your colleagues, I know you are doing the job right.

LAW OF THE SEA TREATY

The administration has announced it is conducting a policy review of the Law of the Sea Treaty in relation to the deep sea mining issue. Critics of the review claim it raises serious questions as to whether the administration is at all committed to completion of the treaty which assures rights of passage for U.S. aircraft and naval forces, as well as international shipping.

To what extent are you involved in this review, and when do you expect it to be completed?

Ambassador KIRKPATRICK. I really am not involved at all. The United Nations Ambassador has never been involved in the Law of the Sea. They meet under our roof at the U.S. Mission at the United Nations. There is a special negotiating team which does that, and I can say simply on the basis of discussions to which I have listened in the Embassy and the Cabinet, we are not repudiating the treaty. What we are doing is systematically trying to review where we stand, and we propose to participate in good faith, but I am not personally involved, and I am not knowledgeable about it.

U.N. INITIATIVES IN PERIODS OF CRISIS

Senator WEICKER. One of the criticisms often voiced against the United Nations is that it is impotent in averting conflict. Today we face serious situations in various areas: In Lebanon and Afghanistan, El Salvador, Poland, the Iran-Iraq conflict. Exactly what are we doing to use our offices in the United Nations to effectively deal with these places?

Ambassador KIRKPATRICK. I spoke yesterday and the day before, on Sunday, on Monday, on Saturday with the Secretary General of the United Nations to precisely determine what he is doing and what other parties in the United Nations are doing with relationship to the Lebanese crisis, for example, which we regard as very serious.

I can only say that there is a wide range of initiatives which are being undertaken in the United Nations. The Secretary General has spoken with and made case to and pled with representatives of all the powers and the groups involved. He has been, by the way, in very close touch with Secretary Haig by way of me, who is now in the Middle East, of course, with a personal concern with the merging Lebanese crisis. He is in close touch with representatives of all the other governments of the United Nations attempting to persuade the people to cool it, if you will.

I don't think it would be appropriate or very useful for me to try to detail here precisely what the Secretary General has done in the effort to influence the various parties of the conflict. I can assure you, though, he has been in touch with all the parties of that conflict. He also has undertaken a good many efforts in the mediation and investigation of the conflict. The conflict prevention efforts at the United Nations is a little bit sometimes like medicines and diseases, you are not quite sure what is working. If no war breaks out in Lebanon, we will never know, none of us, what role the various demarche taken by the United Nations played in that happier resolution. I can only say the problems are serious. They do what they can. I have been really quite impressed by the energy and imagination with which the officers of the United Nations have attempted to pursue these, use their limited influence on a wide range of these problems. They are better than I thought they were.

UNIFIL AS PEACEKEEPING FORCE IN LEBANON

Senator WEICKER. Is the peacekeeping force in Lebanon a Syrian endeavor?

Ambassador KIRKPATRICK. The U.N. peacekeeping force? No, the U.N. peacekeeping force in Syria is called UNIFIL and it is in southern Lebanon.

Senator WEICKER. What does it consist of?

Ambassador KIRKPATRICK. It consists of Nigerians, Fiji, Irish, and Norwegians. A number of nations have provided troops, and what they have attempted to do is constitute kind of a buffer among the various warring factions which include sometimes the forces of Major Haddan, the forces of the PLO, who are in the area, the Lebanese Government, the Israeli Government. They are all in that area.

Now, what UNIFIL tries to do in Lebanon is keep them apart and substitute discussion for shooting. They are not always successful at that. The Syrians are found mainly in the northern parts of Lebanon. That is a different situation. There are no U.N. troops anywhere except in southern Lebanon.

Senator WEICKER. The U.N. presence doesn't seem to be very visible in any of these conflicts. We seem to take matters in our own hands; the Soviets do somewhere else.

Ambassador KIRKPATRICK. The human proclivity to war is a little like human proclivity to death. You don't solve the problem but you keep trying to deal with it.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have other questions which I am going to be submitting for response to the record.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WEICKER

To what extent did you participate in the preparation of this budget request, submitted by the Administration, for our assessed contributions to the UN and UN affiliated organizations?

The proposal in the present budget request was reviewed by my office.

I participated in discussions on the gross sums to be recommended for each of the UN affiliated organizations to which we make voluntary contributions -- and in early discussions with David Stockman and the Office of Management and Budget.

Do you fully concur with the decision to fund our contributions over the next four years for three quarters each year?

Yes, I participated in making the decision.

As I understand this proposal, the effect of the deferrals will be to eventually make our payment for a given calendar year in October of that year rather than quarterly as we do now.

What effect will this have on the United Nations?

Will is need to issue bonds, seek loans, or raise assessments in order to adjust to a cash flow problem?

For a number of years, a "financial crisis" has existed at the UN because of Soviet withholding; the US has resisted any efforts to improve the financial stability of the UN that would have a secondary effect of letting the Soviets off the hook. When the United Nations learned of the deferral, a senior Secretariat official expressed serious concern over the impact of US deferral on the financial situation of the UN. He enumerated some of the options that might have to be considered:

(a) request the next General Assembly to increase the working capital fund from $40 million to up to $300 million. The major donors, including the US, would be out-voted. Our share of the increase would be $65 million.

(b) appeal to other major contributors to advance the payment of their assessments. It is uncertain that our allies would be willing to cover us.

(c) defer sizeable significant disbursements until latter part of each year. This is limited because most expenditures are salaries and other regular monthly expenditures.

(d) borrow temporarily from other funds and accounts under the custody of the SYG. Other members are likely to oppose this.

No final decisions have been taken on this matter by the UN or its Specialized Agencies.

To what extent do other organizations, such as the World Health Organization, have cash reserves which will enable them to overcome adverse consequences of the deferred payments by the United States?

Most of the United Nations organizations maintain trust funds established through voluntary (non-assessed) contributions, including monies provided by other UN agencies. For example, the United Nations Development Program and the United Nations Fund for Population Activities provide money to the World Health Organization for the conduct of certain health activities. None of the money in these accounts may be used to carry out regular-budget activities. If the WHO or other UN agency encountered financial difficulties because of the deferred payment plan, these funds in trust contributed by other organizations or governments could not be drawn upon to support the approved program.

On the other hand, certain "internal borrowing" is permissible. Again using WHO as an example, that organization may borrow from its funds on hand to cover liquidated obligations, from its casual income (miscellaneous income) account, its account for terminal payments to employees and several small accounts established for real estate rental income, building concessions and other items. All borrowing must be repaid as soon as possible. No borrowing is permitted on trust funds.

It is not clear whether this temporary borrowing would be adequate to meet shortages in the collection of assessments. Although there is substantial casual income available in early 1981, a late payment from the United States would likely result in much less casual income from assessments in future periods, and thus less money to borrow. If the United States appropriation process were for some reason delayed, or if other nations followed the practice of the United States in paying only in the fourth quarter of the UN-agency fiscal year, the organizations could find themselves with insufficient "borrowable" resources. For this reason, there is talk in some circles that "external" borrowing authority should be created in order to ensure that there are available the resources needed to implement the approved program plan.

In sum, there is no source of permanently available monies to compensate for shortages in the collection of assessments. WHO and other UN agencies may be able to cover a certain amount of their financial difficulties through internal borrowing on some of their accounts. Further, in the first fiscal year of a biennial budget period, some costs for which funds are not available may be deferred into the second year; but that remedy would not be available at the end of the biennium's second year. But neither practice may be sufficient to meet the short-fall in total contributions.

We have had problems with the policies of some of the UN organizations such as UNESCO and the World Health Organization. Do you anticipate that these deferrals will put pressure on them to take notice of our complaints or could it prove counter-productive?

The judgment of the US Permanent Delegation to UNESCO is to the effect that the deferral could delay action on certain programs, but overall it will not be disruptive to UNESCO's operations.

Unless the deferral is presented as a formal demarche pointing out US complaints with UNESCO, the Secretariat will probably choose to interpret it as a result of US budgeting difficulties and make appropriate compensating provisions in the UNESCO budget and payments cycle. However, I also anticipate that, in conjunction with certain other communications, UNESCO will be reminded of the possibilities of more severe US reductions.

Would it not be better and more direct to focus our complaints by temporary withdrawal from the offending organization?

Membership in the United Nations and the various Specialized Agencies is by treaty ratification by national parliaments. Withdrawal normally requires two years notice. "Temporary withdrawal" implies that it is possible to withdraw quickly and return quickly but this is not possible. The US has withdrawn from and returned to the ILO but this process took four-and-one-half years.

An alternative and perhaps more effective pressure tactic on an offending agency which can have a more immediate impact is the temporary withholding of quarterly dues or the delay in payment of annual assessments. The US has done this in the past with UNESCO and the ILO and brought clearly to the attention of those agencies our concern over policies they had adopted.

We did withdraw temporarily from the International Labor Organization. Can you tell me what effect that action had on the policies of the ILO? Have our disagreements with the ILO been addressed?

Four major concerns of the U.S. about the ILO were described by Secretary of State Henry Kissinger in his 1975 letter which gave the requisite two-years' notice of withdrawal. He reported gorwing concern over (1) the erosion of tripartitism in the ILO; (2) selective concern for human rights (specifically, Soviet countries were immune from criticism); (3) violations of due process (in that Israel was subjected to critical resolutions without proper procedures such as ascertaining facts and evaluation of circumstances); and (4) ILO conferences were politicized to the extent that normal activities were hampered.

At the 1978 and 1979 annual conferences, which the US did not attend, the ILO strengthened tripartitism and improved the ability of representatives of governments, workers and employers to participate in ILO activities as equals. The 1979 conference adopted secret balloting procedures which will enable worker and employer delegates from totalitarian countries to "vote their consciene" without fear of reprisals.

In 1978 the ILO censured Czechoslovakia for violations of workers' rights. A continuing investigation of Czechoslovakia and the Soviet Union was pursued despite efforts by the Communist bloc at the annual conferences to thwart such procedures. The Soviet Union was censured in early 1981 as a result of these investigations.

An investigation of complaints against Poland for failure to implement ILO Conventions 87 and 98 and harassment of worker representatives played a major role in the events leading up to the recognition of Solidarity as a free trade union in August 1980. The ILO continues to monitor the Polish situation which is an important consideration favoring peaceful progress there.

In 1978, the ILO Conference defeated an Arab resolution seeking to extend a 1974 resolution that condemned Israel without any investigation of the facts. The U.S. and its western allies have been working to hamper politicization of the ILO and have met with mixed success. Although efforts to persuade the Director General to interpret the ILO Constitution in such a way as to empower him to block suspect resolutions have not yet been successful, there seems to be a growing consensus among members that political issues have no place in the ILO.

An anti-Israel resolution was narrowly approved at the 1980 General Conference under circumstances which suggest that this was a Phyrric victory for the sponsors. Compliance with the resolution has been minimal and insignificant.

A well-thought-out and skillfully conducted diplomatic campaign by the US during the ILO's development and consideration of its 1982-83 biennial budget resulted in substantial reduction of projected expenditures and a simultaneous tightening of administration. Much of the retrenchment forced on the ILO by the absence of the US was retained or preserved in other savings through the US initiative.

US withdrawal from the ILO clearly contributed to the progress that has been made. Western countries played a more active role in pressing for reforms; a majority of ILO members successfully resisted efforts to subvert due process and constitutional procedures. The USSR was unable to capitalize on the US absence. However, continuing to remain outside the ILO would not have yielded additional benefits to the US. Those members who worked to achieve the gains would have been disillusioned if the US had failed to return. Many US interests can readily be recognized in the goals of the tripartite, 62-year-old ILO; resumption of US leadership in the organization has been beneficial.

US disagreements with the ILO have been successfully addressed, although obviously not all goals have yet been reached nor all problems solved. The relationship seems for now to be a mutually productive one, spurred by occasional disagreements. The prospects of future participation are for continued activities beneficial to the US national interests.

UNESCO is budgeting 16 per cent for program growth. Can you tell us how these additional funds will be used?

The UNESCO budget shows 6.34 per cent program growth for 1981-83. The additional funds will be used primarily to expand programs in the education and natural sciences sector, with particular emphasis on the Man and the Biosphere Program (MAB) in the latter.

Is UNESCO transferring any projects previously financed through voluntary contributions to the assessed payments budget?

In general, the transfer of program funding from one category to another runs in the opposite direction. For example, a pilot project originally funded with "seed money" from the assessed budget will be transferred to the voluntary funding category when it has completed the "pilot" stage and is at the point of expansion. Very occasionally, a project which originally received voluntary funding but which continued longer than anticipated or was more costly than initially estimated will receive small amounts of emergency assitance in assessed budget funds. However, the UNESCO Secretariat has assured our Delegation that such instances are rare and the amounts involved are statistically insignificant.

Indeed, a comparison of program funding figures only (excluding administrative costs, translation and documents services, etc.) for 1979-80 and 1981-83 shows that the assessed budget will actually supply only 48 per cent of the program funds for the present budgetary period whereas it supplied 50 per cent of the program funds during the earlier period. Thus, there will be a 2 per cent increase in program funds coming from voluntary and extra-budgetary sources during 1981-83 as comapred with 1979-80.

The Untied States, through its Mission to the UN, attempts to keep the budget of the UN down. Can you tell us what efforts you have made and what the result of these efforts have been?

Our efforts take many forms. Let me cite only three specifics:

1. Last Fall, in conjuction with some of the other major Western donors, we made a demarche on a senior UN official to make clear our insistence that the 1982-83 budget be prepared on the basis of zero net program growth.

2. Last December, the U.S. and the UK coordinated in a move to encourage major donors not to support the supplemental budget. The result was that members paying almost 79% of the budget voted against. That was unprecedented, and there are clear indications that the UN Secretariat has received the message.

3. In January we sent a letter to the Secretary General reiterating our concern.

The reports we are receiving about preparation of the next biennial budget is that the Secretary-General is taking a firm line on zero net program growth.

What steps has the US taken to ensure that new or expanded programs will be effective?

The US any many of the other major donors are taking the position that there should be zero net program growth, and that any new or expanded programs should be funded by reductions or elimination of low priority programs. At this point we are not aware of any new programs. Any expanded programs would, by this definition, have to be high priority with a strong motivation for effectiveness.

Does the United States have sufficient time, resources, opportunity, and authority to develop information to effectively challenge and realign the budget?

The Bureau of International Organization Affairs is about to implement a major reorganization which will place much greater emphasis on management of the budgets of international organizations. We are reassigning and recruiting personnel with qualifications that will enhance our ability to analyze budgets and control their direction. It is late in the cycle of most organizations to influence the next budget (for 1982-83), but we plan to take actions that will support our goal of zero net growth in the next biennium.

How many persons does the State Department have assigned to budget and program review and are all of these persons assigned to the US Mission?

The UN Mission has a five-person Resource Management Section headed by a Counselor with extensive budget and accounting experience. Its function is to review the budgets and programs of many international organizations and to monitor personnel actions.

The IO Bureau also performs major budgets and program review functions. IO's office of the Budget, consisting of five budget specialists under the direction of the Executive Director, manages appropriations to international organizations and programs. Its review and analysis of international organization budgets is an important element in the detailed program reviews now being conducted by three budgetary specialists in IO's office of UN Budget and Administration. Two additional specialists will soon be added to allow even more detailed review of the effectiveness of UN agency programs.

As in several other areas of operation, it seems to me that it would make sense to have relatively more UN budget and program oversight analysts attached to the US Mission, and relatively fewer stationed at the State Department in Washington.

In 1975, the UN General Assembly adopted a resolution requesting the Secretary-General to identify completed, obsolete, marginal and ineffective programs. Can you please tell us what the Secretary-General has done in carrying out this requirement?

The exercise has been slow to get off the ground. The early results were, quite frankly, disappointing. However, the US and some of the other major donors have been persistent and firm. Last fall, when the work on the 1982-83 budget began, the top officials of the UN came down heavy on the need for identifying such low priority activities.

One must realize however that a project we consider marginal may be of high priority to another country, particularly a developing country.

One effective way to bring about the kind of changes called for in the UN resolution is to insure that there are top quality Americans on the staff of the various UN agencies in policy making positions which will enable them to discontinue projects that are marginal, obsolete or ineffective.

Closer oversight by the US is another means which we intend to utilize more fully.

Can you tell us how much has been saved as a result of the identification of obsolete, marginal, and ineffective programs?

Unfortunately no. The first attempts at identifying the savings from such low-priority activities produced minor amounts. We are hopeful, however, that when the proposed budget for the next biennium is available and has been reviewed, it will be possible to point to more meaningful amounts.

We have been informed that in December 1980, during the 35th Session of the UN General Assembly, the latest in a series of six resolutions dealing with completed, obsolete, marginal and ineffective activities was adopted. However, in a departure from the previous resolutions on this topic, the most recent one was not co-sponsored by the US.

Does this represent a shift in policy, and will the US continue to support the need for identification of such activities?

No, this is not a shift in U.S. policy. We voted in favor of the resolution and will continue to support vigorously its recommendations.

There was a shortfall of almost $5.5 million last year in our contributions for UN peacekeeping activities. What were the reasons for this shortfall and why are you requesting funding in fiscal year 1982 rather than requesting a supplemental in fiscal year 1981?
(Justification pages 37 -

A policy decision was made at senior management levels within the Department, not to seek a supplemental authorization. I am not aware of the reasons for this decision.

What actions or responses has the ILO made to the recent labor and political unrest in Poland?

The ILO has expressed in its Conventions the rights of workers which the Polish people announced as their goals in the summer of 1980. The ILO had been working with the Polish Government to address these legitimate worker aspirations.

In July 1978 the International Confederation of Free Trade Workers (ICFTU) and the Metal Workers Federation (MWF) submitted formal complaints to the ILO that Polish legislation was not in conformity with ILO Conventions 87 and 98 which provide for freedom of association and protection of the right to organize trade unions for collective bargaining. Poland had signed these Conventions. The complaints also charged harassment of a Workers' Defense Committee (KOR) which in October 1977 was renamed the "Social Self-Defense Committee" and began publishing a bulletin called "Robotnik."

The ICFTU complaint further alleged that in May 1978 the police arrested ten persons associated with KOR and the Founding Committee of the Free Trade Unions of the Baltic Coast, and that similar harassment was undertaken in February 1978. The ICFTU noted in addition that a similar workers' initiative was taken in February 1978 by workers in the Katowice area, inspired by a number of members of the Social Self-Defense Committee.

The Freedom of Association Committee of the Governing Body of the ILO took up this complaint (Case No. 909) in May 1979. The Committee considered it further in November 1979 and March 1980, at which time it was noted that the Polish Government had invited the ILO to send a member of its staff to visit Poland to advise on corrective courses of action. Nicolas Valticos, head of the International Labor Standards Department at the ILO's Geneva Headquarters (and a Greek citizen) visited Poland from May 5 to 12, 1980.

As the world knows, the Polish workers rose in August 1980 and demanded the rights promised in the ILO conventions, forcing the Government to negotiate seriously. At the end of the month, the flagship strikes at the Gdansk shipyard and elsewhere in Poland were resolved when the Government agreed to the workers' twenty-one demands. The first of these 21 was fulfillment of the obligations of ILO Convention 87 by the Polish Government. The new free trade unions made possible by this settlement were recognized under the name Solidarity (Solidarnosc).

On August 21, before the settlement, ILO Director General Francis Blanchard told the press of the "major responsibility" of the ILO for free trade unions and said that ILO agencies were involved in the Polish situation. Discreet investigation by ILO officials of the possibilities for mediation then and later during periods of tension were gratefully acknowledged by Polish officials and by Solidarity but every effort was taken to avoid any appearance of non-Polish influence on agreements reached. It is believed that the ILO will provide expert technical assistance in 1981 to help in the implementation and supervision of labor agreements in some cases.

In November 1980, the ILO committee investigating complaints against Poland decided, at the request of the Polish Government, to take no further investigatory action in view of the events in Poland of the late summer, but to continue to observe developments there. The ILO has thus become a quiet and mutually acceptable monitor of the August 1980 agreements and a facilitator of continued peaceful negotiations.

INTERNATIONAL ORGANIZATIONS

Former Ambassador Young spent a lot of time in Africa during his service at the United Nations. Your immediate predecessor, Ambassador McHenry, was probably too diverted by the Iranian hostage issue to have any other interest.

On "Meet the Press" last Sunday, the Ambassador took a global view of her responsibilities, but won't there be some particular interest we can expect of Ambassador Kirkpatrick at the United Nations?

I see my job as representing US foreign policy in the United Nations, and that policy will dictate my areas of concentration. To date, I have spent much of my time on Middle Eastern and Southern African issues. I expect that those issues will continue to be important, but external events could easily make other issues equally if not more important.

In fiscal 1981 the domestic staff of the Bureau of International Organizations Affairs is being reduced 23 positions from the level in 1980. This reduction includes 8 in the staffing of the US Ambassador to the United Nations.

- *Am I correct that this involves elimination of the Washington Office established for former Ambassador Young?*
- *How will the Ambassador absorb these reductions?*
- *Does the United National Ambassador still sit in on Cabinet Meeting and how many has she participated in since being confirmed as Ambassador?*

The UNA State Department office will not be eliminated.

If such a decision was made to reduce the US Mission staff by 8 positions this decision was made without consultations with me. And, indeed, I am still unaware of it. Since the staff of the US Mission is already stretched thin, it is difficult to see how a cut of 8 positions could be absorbed.

As a member of the Cabinet I have participated in and attended all Cabinet Meetings held since my designation as the USUN Ambassador.

What response, if any, does the Ambassador expect the United Nations to make to a Soviet invasion of Poland?

Ambassador Kirkpatrick has spoken with the Secretary of State and related officials in the State Department and the National Security Council, who have coordinated contingency planning concerning any Soviet invasion of Poland.

Should there be an invasion of Poland, we would closely concert our action with that of our allies. Doubtless, a meeting of the Security Council would be called to deal with this act of aggression in violation of the UN Charter. While the Security Council would undoubtedly be prevented from taking action by a Soviet veto, the debate would serve to focus world opinion on the Soviet action in violation of international law. When the Soviets veto, one possibility would be convocation of the UN General Assembly under the "Uniting for Peace" Resolution, which can be used when the Council is prevented from action by a vote. This was done in the case of the Soviet invasion of Afghanistan. The UN might also need to be involved in providing humanitarian assistance to refugees fleeing Poland following an outright Soviet invasion.

How much is the UN and its agencies giving to terrorist groups such as the PLO and SWAPO?

- *Is it correct that during 1980 the UN agencies gave SWAPO more than $12,000,000?*

- *Why does the UN continue to underwrite SWAPO's New York office?*

UN regular budget support for SWAPO's New York liaison office was authorized by General Assembly Resolution 3295 (XXIX) "...to ensure the due and proper representation of Namibia through the South West Africa People's Organization at the United Nations." The resolution was passed in 1974 by a vote of 112-0-15. The United States abstained on the resolution but we have since clearly stated our objection to the inclusion of appropriations in the UN budget and we have since regularly voted "no" on this Section and spoken out against the practice of financing the SWAPO office in the UN budget.

It is not correct to state that in 1980 the UN and its agencies "gave" SWAPO more than $12 million, or, indeed, gave SWAPO any substantial figure. Various UN agencies (including the High Commissioner for Refugees, UNICEF, and UNDP) have provided relief commodities for Namibian refugees (i.e., Namibians physically outside of Namibia) or other technical training and assistance for Namibians which would redound to the benefit of these refugees, but, no transfers of UN funds are made which might have been used by SWAPO for purposes inconsistent with the relief or assistance of Namibian refugees. We can state this fact with some assurance since the UN payments go only for the supplies directly or to the UN agencies executing the programs.

We are making additional efforts to attempt to itemize specific amounts spent by specialized agencies of the UN that provide SWAPO direct or indirect support.

Beginning with the 1982 budget, the State Department is proposing to change our payments to the UN so that by 1985 all of our payments will be made in October. At the present time our payments are made quarterly to the UN's calendar year budget.

Does the Ambassador believe that the UN has the means to operate for 9 months of a year without any of the United States funds which amount of 25% of the UN budget?

I believe that the proposed handling of the budget will create a certain amount of hardship for the UN agencies concerned but these difficulties will not be insurmountable. The proposed approach will provide short-term savings for the US government and during this period we will carefully examine the operation of UN agencies in the search for more permanent savings.

We plan to phase in the new payment schedule to the UN in order to give the organization an opportunity to adapt to it. During the transition the UN will probably make some changes in its financial management. However, it is believed that the UN can adapt its operations to our change in the payment schedule.

This approach represents the best response available to the combined needs of the United Nations and the United States.

As of September 15, 1980, 55 of the UN members had not paid any of their 1980 assessment. This includes Russia, the Ukraine, and Byelorussia which amounts to almost 13% of the UN funding, but also OPEC members such as Saudi Arabia, and Nigeria. In fact, 27 of the countries paying the minimum assessment of $51,206 had not payed anything on their 1980 dues. Meanwhile, the United States had made its regular quarterly contribution.

- *What is the Ambassador's assessment of the financial outlook of the United Nations?*
- *Are the Nations telling the UN they can't afford the organization?*
- *Does the Reagan Administration believe that we should continue with a sprawling, expensive global bureaucracy in which two-thirds of the 154 General Assembly votes*

represent less than 10 percent of the world's population, while 30 practicing democracies provide more than two-thirds of the financial support?

The UN's financial procedures provide that a payment by a member state is credited against its oldest outstanding assessment. Only when all arrearages are settled, will the UN Treasurer's office credit a payment to a member's current annual assessment.

UN documents (A/INF/35/3) show that, as of September 15, 1980, 30 of the UN's 154 members had not made a payment; however, by year's end all but 19 member states paid something. (ST/ADM/SER.B/252) The three Soviet States had paid $31,820,110, as of September 15, and $64,115-219 as of December 31. Nigeria had paid $86,720 by September 15, and by year's end Saudi Arabia had paid $2,969,930. Of the 30 nations which had not made a payment by September 15, only 8 were minimum assessment countries.

The UN financial situation has been a source of continuing concern during the last decade. The total deficit, which is now over $300 million dollars, grows larger each year and has several causes, primarily the refusal of certain Member States to pay those portions of their assessments attributable to UN peacekeeping activities and, to a lesser extent, to meet their assessments for technical assistance. Efforts to deal with this situation have included the issuance of UN Bonds, and caused the depletion of the $40 million Working Capital Fund.

In 1975, the UNGA created a Committee on the Financial Emergency of the UN. It reported that the situation remained serious but that no solution was in sight. Consideration of that report has been deferred by each subsequent General Assembly.

Frankly, we do not see a solution in sight, either. The US has always maintained that member states should pay their arrearages. Even though recent legislation has caused us to withhold a small amount in 1980 and 1981. Attempts over the years to negotiate a financial settlement of UN debts have failed.

Currently we are concentrating our efforts on urging the UN and its specialized agencies to become more efficient in the use of the funds which they do receive. We take an active role in committees which seek to make UN operations more efficient and less costly, and we believe that the UN, like the US, will have to make some unpleasant choices on program termination because funds are simply not available. There are some signs throughout the UN system that this message is having an effect.

From time to time, many member states encounter problems in making their assessed payment on time and if prolonged difficulties arise, they usually explain their problems, in an appropriate forum. To the best of our knowledge, no member state has ever said that its financial future is so bleak that it could not afford continued membership in the organization.

Voting rights in the UN are based on the concept of sovereign equality among nation states (except for the unique privilege of the veto) and we do not believe that any system based on other factors such as population or size of payments would find much acceptance among the nations of the world. Our principal allies are generally satisfied with the UN system although they have been reasonably supportive of our efforts to hold down costs. The US Government has taken a number of forceful steps in many UN fora to impress upon member states as well as upon the UN Secretariat, the notion that efficiency and economy must govern the UN's activities, as with any other organization.

The Reagan Administration is profoundly concerned about the size and cost of the global bureaucracy associated with the United Nations. I firmly intend to examine the budget in detail with a special eye to administration costs and the proliferation of bureaucracy. I expect also to be deeply interested in UN personnel policies.

At the end of December, the World Health Organization had more than $23,000,000 in "casual income" available. We are also informed that the Food and Agricultural Organization and other UN agencies have on hand considerable amounts of such income.

- *Do you have a listing of the amount of "casual income" on hand December 31, 1980 for each of the UN agencies?*
- *Why isn't this income -- which in the case of the WHO amounts to 10% of their 1980 budget -- used to reduce assessed contributions?*

Unaudited estimates of WHO's casual income as of December 31, 1980 are $23,036,749. The WHO budget proposal for 1982-83 suggests that $12 million of casual income be applied so as to reduce the assessment budget. The US has informed the Director General of WHO that more casual income must be used and, unless the amount is increased, we will not support the proposed budget. We are also working with other major donors so that they will take similar positions.

The latest estimate for UNESCO was made in September, 1980. At that time it was estimated that there would be $27,894,000 as of December 31, 1980, all of which is applied to reduce assessments.

ILO had miscellaneous income of $976,520 as of December 31, 1980 (unaudited). Following tradition, that will be applied in due course to the Publications Revolving Fund.

Mescellaneous income for the UN was $2,315,458 as of December 31, 1980 (also unaudited).

FAO had estimated miscellaneous income at the end of 1980 of $10.7 million. It will be used first to replenish the Working Capital Fund and the Special Reserve Account, and any excess will be applied against members' assessments.

Several years ago the Subcommittee found much abuse in the special housing supplement paid the United States staff at the United Nations. We found secretaries, as well as persons living in New Jersey, Westchester County, and other areas far removed from the immediate UN area, receiving this allowance. Our most recent review in January found that the supplement was being restricted to personnel living in the immediate vicinity of the UN and having representational responsibilities.

Can the Subcommittee be assured that the Ambassador will continue to restrict the payment of the housing supplement to only those personnel who have to live in the immediate UN vicinity because of their representational responsibilities?

I am fully committed to living by both the spirit and letter of the law concerning housing allowances and other personnel matters that specifically include the payment of a housing supplement to those personnel required to live in the vicinity of USUN.

I desire to note that allowances provided to USUN personnel are extremely inadequate as compared to those available to diplomatic personnel from other nations, and as compared to personnel in overseas posts.

There are serious financial difficulties confronting any Foreign Service Officers anticipating assignment to USUN. These financial constraints make it difficult to recruit first-class personnel. These problems have been experienced by my predecessors and have already afflicted the quality of this Administration's operations.

The Congress could make a major contribution to the quality of the USUN Mission if they would agree to treat USUN as a foreign mission -- making available the housing and educational allowances and tax credits allowed to foreign service personnel elsewhere.

The Committee's Report last year urged the US Mission to the OAS to review the expenditures for the Inter-American Defense Board. Were those expenditures reviewed and when will the results of the review be submitted to the Committee as requested in the Report?

The budget of the Inter-American Defense Board (IADB) was cut above 5% in 1980 ($1,758,700) from the level of 1979 ($1,834,300). This cut was the outcome of detailed budget review and extensive negotiations with other delegations, some of which objected strongly to reductions which they argued would weaken the IADB's role and potential in coordinating military planning and preparedness in the hemisphere.

Contrary to the views and the vote of the US delegation to the OAS, the Organization adopted a budget in 1981 providing for a 15% increase in salaries. As a consequence, the IADB budget for 1981 increased to $2,135,000. This increase, it should be noted, amounts to an annual increase of 8% since 1979 which is less than the annual rate of inflation for those years and consequently within the no-growth guideline of US policy towards international organizations.

INTERNATIONAL PEACEKEEPING ACTIVITIES

The request for International Peacekeeping Activities in 1982 of $60,938,000 is about 18% higher than the current appropriation. As of September 15, 1980, almost $117,000,000 was outstanding in contributions for the United Nations Interim Force in Lebanon (UNIFIL) alone. Russia was responsible for more than $46,000,000 of that amount.

- *What is the total amount owed for all United Nations peacekeeping forces?*
- *Are the paying nations, such as the United States, being asked for more because the Soviets are not paying their assessments?*
- *Why isn't peacekeeping included in the regular assessments -- such as the technical assistance that the Congress objects to -- so that the Soviets would have to pay their rightful share?*

The financial period of UNIFIL ends December 18. As of December 30, 1980, total contributions outstanding for period through December 18, 1980 was $104,358,798. Additional amounts for the current period which began December 19, 1980 were also outstanding, including that of the US.

As of December 31, 1980 a total of $83,899,228 was owed for the UN Emergency Force (1973) and the UN Disengagement Observer Force. Included in $23,756,425 for the Soviet Union which had stated it will not pay that portion of its contribution which it identifies as being for the expenses of the UN forces related to their additional functions emanating from the Egypt-Israel Agreement of September 4, 1975.

The burden of delinquent assessments falls on the countries who contribute their troops and services. Because of the inadequacy of funds, the UN is unable to reimburse those countries promptly. Paying members do not make up the short-fall. The 18% increase in the assessment is attributable to revised per capita for troop reimbursement rates reflecting more current economic realities.

The Soviet Union is assessed at a higher rate for peacekeeping than for the regular budget. The complicated UNEF/UNDOF/UNIFIL apportionment scale assesses the five permanent members of the Security Council about 17% more than their rates under the refular scale. The Soviets are shown as owing for peacekeeping in all UN documents on status of contributions and are not exculpated. According to the International Court of Justice, Article 17 of the UN Charter: "The expenses of the Organization shall be borne by the Members as approtioned by the General Assembly," applies to peacekeeping.

U.N. PERSONNEL

Senator WEICKER. Let me ask you this, since taking over as Ambassador, has your staff been filled? What is the situation as to personnel?

Ambassador KIRKPATRICK. We are very inadequately staffed, actually. It hampers our function.

Senator WEICKER. Where do we sit personnel-wise with your operation for the United Nations? What is the status report?

Ambassador KIRKPATRICK. 109 positions.

Senator WEICKER. How many are filled?

Mr. WATKINS. I don't know how many are filled.

Senator WEICKER. You don't know how many are filled?

Ambassador KIRKPATRICK. I know more or less how filled they are, particularly at the senior level. We have made definitive appointments of only two of the Ambassadors for the new administration and there are several slots which are still open. We have my Washington representative still not appointed. One of our Ambassadors is functioning but not yet designated. It is a very slow process. As a political scientist, I must say I was not really fully cognizant of just how complicated and difficult it is to staff an organization no bigger even than the U.S. Mission at the United Nations. It is tougher than I ever dreamed.

Senator WEICKER. What I am worried about now is your technical personnel being unable to respond to how many of these positions are filled. Can somebody tell me, out of 109, how many positions are filled or unfilled? Can I get a status report? Who is in charge of that department?

Ambassador KIRKPATRICK. Senator Weicker, I should have brought my administrative officer, and I didn't. I think that is the problem, in fact. He will be able to give you the answer to that question. These are financial officers, not budget officers.

[CLERK'S NOTE.—The Ambassador's delayed answer follows:]

Of the 109 positions contained in the fiscal year 1982 budget request for USUN, 7 are currently vacant. Clerical level positions comprised 4 of the vacancies, of the remaining 3 are for Presidential appointees who have not yet completed the preappointment process.

DEFERRALS FOR CERTAIN ORGANIZATIONS

Senator WEICKER. Of the total $160 million deferral from contributions to international organizations, $112 million is from the United Nations and four affiliated organizations—UNESCO, World Health Organization, the Food and Agricultural Organization, the International Labor Organization. According to my calculations, the deferrals in these accounts amount to 29 percent. In some smaller organizations, such as the Patent Cooperation Treaty, the deferral is 35 percent, and for the General Agreements on Tariffs and Trade, the deferral is just over 31 percent. There are other organizations, mostly smaller, such as the Universal Postal Union, but, also, NATO, where no deferral is planned.

Can you tell us how you determined which organizations were to be subject to deferrals?

Mr. CREEKMORE. May I respond first, Senator? We needed to work out a way by which we could defer roughly $160 million the first year and a total of $600 million over a 4-year period. The best way to do that would be 25 percent a year. As I mentioned in my statement, we had a fairly significant amount of 1980 arrearages and 1981 shortfalls, and so we took that into account in trying to determine how much to defer the first year. We are deferring approximately 29 percent of the 4-year estimated total in this first year.

We took the major organizations that are working on a calendar year budget. I believe there are 15 of those. Those are the ones with which we are dealing. We try in general to work out around 25 percent of their budgets, in that particular first year. But as I said, the total figure comes out to 29 percent for fiscal year 1982.

Dick, perhaps you might want to add something.

Mr. HENNES. When the deferral process is completed, it will be 100 percent. The first year, as Mr. Creekmore mentioned, because of arrearages in fiscal year 1980, and shortfalls in fiscal year 1981 did not work out precisely to the 25 percent level.

Senator WEICKER. What savings will the United States accrue in outlays and budget authority over the next 4 years as a result of the decision to defer payments to the international organizations?

Mr. CREEKMORE. We estimate around $600 million.

Senator WEICKER. I must confess to you I don't understand the policy arrived at, or the policy behind this decision. Is there something to show some favorable bottom line figures insofar as the preparation of the 1981 budget is concerned? I really don't see where there is anything to be gained here.

Mr. CREEKMORE. There are three immediate gains. One is a budgetary gain, not only for fiscal year 1982, but 1983, 1984, and 1985 and, of course, we will continue to make our payment. We carry out the deferrals without going into arrearages, but we are bringing about budgetary savings in those particular years. We also are going to be able, after the system is fully in place, to come to the Congress with precise numbers of what our assessment really is rather than what we estimate it may be. Therefore, we will not have to be coming back for supplementals in the future to make up where our estimate appears to be wrong.

The third point is that we are going to use this 4-year period to review very carefully every one of these organizations and on the basis of the findings of these reviews determine whether or not it is in the United States best interest to remain in the organizations.

One other final point I might make, sir. If you recall, and I think my year in here is correct, it was in 1976 when the United States changed its fiscal year—from July to June to from October to September. We made one quick payment in order to keep the U.N. organizations from having to wait on their money. Therefore, at that particular time, we authorized and appropriated a large sum of money for these organizations.

In a sense, one could say we are simply going back, more or less, to the process that used to be. We used to appropriate our money in the third quarter of the budget year of these organizations—in their calendar year. In the new system, we will be appropriating it in the fourth quarter.

Senator WEICKER. How many of the developed nations, West Germany, Great Britain, France, follow this practice?

Mr. CREEKMORE. I don't know.

Senator WEICKER. Do you think this might be interpreted by the membership of the United Nations as being somewhat less than an endorsement of the organizations?

Mr. CREEKMORE. I think a number of the organizations understand they will have cash flow difficulties. They would obviously prefer that we not adopt this system, but I think they can make their organizations go. And furthermore, it is certainly far preferable to do something like this whereby the United States meets all of its legal obligations, and does not go into arrears, that other possible alternative.

Senator WEICKER. Some of those arrearages were consciously arrived at insofar as policies conceived on the Senate floor. It wasn't just a matter of us not being able to pay. Some of our more ardent supporters of this administration are some of the architects of those arrearages.

Mr. CREEKMORE. I was referring to the fact there would be no arrearages accumulated because of this procedure we are putting into effect.

U.S. ASSESSMENT TO ORGANIZATION OF AMERICAN STATES

Senator WEICKER. The U.S. assessment to the Organization of American States represents 63 percent of the Organization's budget. It is down slightly 64 percent from last year. Does the administration plan to continue to reduce its share of the OAS budget? What do you feel is an achievable target in the next 4 years?

Mr. CREEKMORE. Senator, we will continue our very intense efforts within the Organization of American States to reduce these assessments. I personally cannot make a projection on what we hope to be able to achieve, but we do have in the audience some experts from our Mission to the OAS. If you would like, you can perhaps recognize them. Mr. Owen Lee and Mr. Herbert Thompson are in the audience.

Mr. THOMPSON. We have been trying very hard, Mr. Chairman, to negotiate a reduction in the United States assessed quota to the Organization of American States. Venezuela, Mexico and others have put forward various suggestions for a new quota system in the Organization of American States. In our view, it would not only correct what we regard as an excessive U.S. assessment but also to correct a number of inequities that have developed over the years.

Unfortunately, none of the proposals that have been tabled has met with support by the two-thirds of the membership that is required in order for it to be passed and adopted. We continue our efforts in that political forum to negotiate a new quota system. The General Assembly, which met last November here in Washington, mandated the Organization to develop such a system in the course of this year. We shall be working very diligently with other countries, particularly the major donors, to try to develop such a system.

Meanwhile, we are funding the budget at slightly reduced levels. The General Assembly in 1979 provided for a decrease in budget assessments which allowed us to fund the Organization in 1980 at 64.7 percent rather than 66 percent. And we are funding this year at a further reduction to 64 percent. We would propose to continue a gradual reduction each year until we get down to 62 percent. Meanwhile, we are hopeful we will be able to negotiate a new quota system which will place our quota at a lower level.

Senator WEICKER. What are these assessments used for?

Mr. THOMPSON. For the regular budget of the Organization, they cover all expenditures of the Organization, political expenses, peacekeeping activities, the full range of activities, other than the assistance and development activities that are funded through the voluntary funds.

VOLUNTARY FUNDS

Senator WEICKER. How do we participate in the voluntary funds?

Mr. THOMPSON. We make voluntary pledges to the voluntary funds each year, separate from the assessed finding, as do the other members.

OAS AND LATIN AMERICA

Senator WEICKER. Madame Ambassador, do you think this is a particularly good signal to send to this area of the world concerning the difficulties which are starting to arise in the area covered by the Organization of American States?

Ambassador KIRKPATRICK. Senator, I think the fact you address that question reflects your understanding with which I agree that Latin America is totally important to us in many ways—culturally, economically, militarily, and so forth—and that it has been grossly neglected in past years. I am not enthusiastic about budget cuts for the OAS. Sometimes, Senator Weicker, the difference between the Democrats and the Republicans is that the Democrats don't believe in money, the Republicans do. I am a Democrat and money never has quite as much reality to me as policy, quite frankly.

I have suffered a good deal in a number of the budget cuts and this is one of them. I speak frankly about this. I understand that our economy is out of hand, and I understand there is a set proposition that we must find ways to make savings and I understand we have to impose those savings on our foreign expenditures as well as our domestic ones.

Some of these, many of them, will be very painful. I find this a painful one.

Senator WEICKER. I appreciate your frank response. I think it is a priority, or should be for this country, if it hasn't been. I am now talking about the entire southern portion of the Western Hemisphere, South America, the Caribbean, and so forth.

Unless our policy consists only of sending advisers and arms shipments, we are in sort of the latter part of the third act; that is the policy. Believe me, it will be a tragic one before we are all through. If we want to stay ahead of the game, active participation of OAS is absolutely mandatory for this country. I just find this incredible. It is typical of the United States that we are going to reduce our OAS commitment, but we are going to send arms and advisers to El Salvador. There you have it in a nutshell as to what the problem is. El Salvador is just the beginning, you know as well as I do, there are six or seven others hanging out there that are not in much better shape. I don't understand that. I really don't.

Insofar as this committee is concerned, maybe we can work together on not sending that kind of a signal.

Madam Ambassador, you have been very candid in your response to various questions. I wish you the best of luck. I think we all recognize the economic difficulties that confront this Nation, but there is a good deal of difference between money that is invested and money that is just thrown out that won't come back in a productive way. Those advisers and those arms aren't going to come back in a productive way to the United States of America. The investments we have been talking about can come back. I am reminded you come from the world of academia. I will cite another quick story as a matter of our history which I think indicates one of the points we have been trying to make today. Most people remember our purchase of Alaska in terms of being called "Seward's Folly". Most people remember we paid $7 million for Alaska, but I tell you that no one remembers when we paid the $7 million, the United States was almost bankrupt—almost bankrupt—when it ~~let~~ go of that $7 million—almost bankrupt. Today we get that back every single day, that $7 million, twice that from the State of Alaska.

There is never a good time to make these investments, whether in terms of our role in the world or in terms of our people here at home, but we have always made them. I am just a little bit worried as to whether we continue to make these investments. It seems to me it has been lumped into one pot and I think that is very dangerous when it comes to an area such as South America and the Caribbean.

Thank you very much. I wish you the best of luck in all your endeavors.

BOARD FOR INTERNATIONAL BROADCASTING

STATEMENT OF CHARLES D. ABLARD, ACTING CHAIRMAN

ACCOMPANIED BY:
WALTER R. ROBERTS, BIB EXECUTIVE DIRECTOR
ARTHUR D. LEVIN, BIB FINANCIAL MANAGER
WILLIAM A. BUELL, RFE/RL VICE PRESIDENT, U.S. OPERATIONS
MICHAEL R. MARCHETTI, RFE/RL TREASURER AND COMPTROLLER

INTRODUCTION OF ASSOCIATES

Senator WEICKER. The next request is that of the Board for International Broadcasting. The amount requested is $98,317,000, which is a decrease of $1,983,000 under the fiscal year 1981 base that includes a fiscal year 1981 supplemental appropriation request of $600,000 and provides for nine permanent positions for BIB and the grants to Radio Free Europe and Radio Liberty.

Appearing on behalf of this request is Mr. Charles D. Ablard, Acting Chairman, who is accompanied by Walter R. Roberts, BIB Executive Director; Arthur D. Levin, BIB Financial Manager; William A. Buell, RFE/RL Vice President, U.S. Operations; and Michael R. Marchetti, RFE/RL Treasurer and Comptroller.

PREPARED STATEMENT

Mr. Ablard, your statement will be presented in its entirety for the record.

[The statement follows:]

STATEMENT OF CHARLES D. ABLARD

Mr. Chairman, it is an honor to appear before this distinguished subcommittee in support of the Administration's funding requests for the Board for International Broadcasting, including grants to Radio Free Europe/Radio Liberty.

The critical role played by RFE/RL broadcasts -- 149 hours daily from 45 transmitters in 21 languages of Eastern Europe and the Soviet Union -- has been vividly demonstrated during the many months of dramatic developments in Poland. The RFE Polish service has in fact been the main, most comprehensive and most reliable information source for the people of that country -- a fact openly acknowledged at all levels of Polish society, from factory newsletters to the Communist party Politburo and Central Committee. Ever since the labor unrest began last summer, day after day, from five in the morning to midnight, the broadcasts have -- in accordance with the Board's Mission Statement -- observed "high professional standards of accuracy, objectivity, timeliness and relevance." As a result, during weeks of crisis, as many as two-thirds of the adult population of Poland have been tuning in.

In recognition of the vital importance of these broadcasts, the Reagan Administration has moved to strengthen RFE/RL by adding $4 million to the proposed Carter budget for FY 1982 and $3 million for the current year. Thus, in the course of FY 1982 RFE/RL will be able to regain its authorized strength of 1,700 employees and institute significant program improvements in such critical functions as news, area research, audience research and broadcast analysis. A significant effort will also be made to upgrade the journalistic and technical quality of Radio Liberty broadcasts to the Moslem populations of Soviet Central Asia, an area bordering on Iran and Afghanistan.

Unfortunately, in the balance of the current fiscal year, at least two-thirds of the additional $3 million which the Administration proposes to make available will have to be dedicated to remedying the consequences of the bomb explosion at RFE/RL Munich headquarters on the night of February 21. In addition to replacement of the shattered telephone system and repair of other damage to the building, enhanced security precautions are clearly in order -- including building and wall modifications, safety glass, improved exterior lighting and a television monitoring system.

Unrelated to the bombing, supplemental funds are also needed to complete installation work on the four new 250-kilowatt transmitters at Holzkirchen, near Munich, and the seven new 250-kW transmitters scheduled for installation in Gloria, Portugal. The collapse of two antenna curtain arrays at Holzkirchen last December, apparently due to defective parts, has incurred additional costs estimated at $200,000.

Despite these and other essentially non-discretionary costs, we hope that at least $350,000 of the requested FY 1981 supplemental can be used to get a head start on the major program improvements foreseen in FY 1982. Priority will go to the special needs of the Polish service and to upgrading the Central Asian services.

Although I have spoken of an additional $3 million being made available for RFE/RL operating expenses in FY 1981, the actual supplemental request is for only $600,000. In addition, the Administration requests that the FY 1981 appropriating legislation be amended to free for general use the $2.4 million previously earmarked for the one-time costs of relocating 45 to 60 of the 1,000 Munich positions to the United States. No relocation had actually taken place when the Administration made this decision.

Mr. Chairman, thanks to the appreciation of the dollar in the foreign-exchange markets since last summer, our dollar request for FY 1982 -- $98,317,000 -- is lower than the FY 1981 appropriation, even though it will provide a real 13 per cent increase over the original appropriation for RFE/RL operating expenses. The Office of Management and Budget has revised the budgetary exchange rates for FY 1982 to reflect the stronger dollar, and the actual rates these last few months have been more favorable even than the new budgetary rates set for next year. In view of the fact that $3,395,000 remains available from previous appropriations for this purpose, there is no need for an additional appropriation for the currency devaluation fund.

In connection with foreign exchange, we are pleased to report that, starting this month, the West German marks essential for RFE/RL are being purchased through the world-wide network of the State Department's Regional Administrative Management Center in Paris, which has the facilities and expertise to take advantage of the most favorable rates available. In subsequent months, other necessary currencies, such as Portuguese escudos, Spanish pesetas, French francs and British pounds, will be similarly purchased. Our conservative estimate is that this arrangement will save upwards of $155,000 a year and will also help mitigate cash-flow problems at the turn of the fiscal year.

Like the BIB purchase of transmitters and related electronic equipment, which has saved RFE/RL hundreds of thousands of dollars in European customs duties and value-added taxes, the new arrangement for purchasing foreign currencies (which constitute 90 per cent of RFE/RL expenditure) is one of those so-called "small" economies which add up over the years to promote the most efficient use of available resources for broadcasts of high professional quality and demonstrated effectiveness.

And now, Mr. Chairman, I will be glad to respond to your questions.

OPENING STATEMENT

Mr. ABLARD. Thank you, Mr. Chairman.

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In recognition of the vital importance of these broadcasts, the Reagan administration has moved to strengthen RFE/RL by adding $4 million to the proposed Carter budget for fiscal year 1982 and $3 million for the current year. Thus, in the course of fiscal year 1982 RFE/RL will be able to regain its authorized strength of 1,700 employees and institute significant program improvements in such critical functions as news, area research, audience research and broadcast analysis. A significant effort will also be made to upgrade the journalistic and technical quality of Radio Liberty broadcasts to the Moslem populations of Soviet Central Asia, an area bordering on Iran and Afghanistan.

Unfortunately, in the balance of the current fiscal year, some two-thirds of the additional $3 million which the administration proposes to make available for program improvements will have to be dedicated to remedying the consequences of the bomb explosion at RFE/RL Munich headquarters on the night of February 21. In addition to replacement of the shattered telephone system and repair of other damage to the building, enhanced security precautions are clearly in order—including building and wall modifications, safety glass, improved exterior lighting and a television monitoring system.

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Despite these and other essentially nondiscretionary costs, we hope that at least $350,000 of the requested fiscal year 1981 supplemental can be used to get a head start on the major program improvements foreseen in fiscal year 1982. Priority will go to the special needs of the Polish service and to upgrading the central Asian services.

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Like the BIB purchase of transmitters and related electronic equipment, which has saved RFE/RL hundreds of thousands of dollars in European customs duties and value-added taxes, this new arrangement will permit these "small" economies which have added up over the years to promote the most efficient use of available resources for broadcasts of high professional quality and demonstrated effectiveness.

Mr. Chairman, we shall be glad to respond to your questions.

RECENT BOMB DAMAGE IN MUNICH

Senator WEICKER. Thank you very much.

I understand you have photographs.

Mr. BUELL. Mr. Chairman, this is a current photograph of the building. The bomb was exploded in this corner where this wing extends, at the root of the wing. This is where the Czechoslovak service is located. The placement of the bomb was chosen probably because it was the easiest access from the street at the time when the man patrolling the building would be on the other side. It is also possible that an effort was made to get as close as possible to master control, which is in this wing, which actually would have knocked us off the air.

You can see by these photographs, Mr. Chairman, that the damage was extensive. Four employees were hurt, three of them seriously. Two are now out of the hospital, but one, a Czechoslovak secretary, will probably have to have extensive plastic surgery to her face, which was badly injured. Another is still in the hospital and may lose the sight of an eye.

The worst part, almost the worst part, I would say, of this damage was broken glass. The concussion was such that about 40 percent of the glass in the entire building was broken. And almost half of the rooms in the building had broken glass in them, which had to be cleaned up.

The telephone exchange was completely destroyed. The maintenance shop, which was in the basement of this wing, was destroyed. This was very costly to us because we had expensive spare parts in that shop.

However, despite this blast, we were off the air only about 2 hours. Initially, the technicians in the master control room were knocked off their chairs, and the concussion stopped the clocks in the control room, but they were able to put 30 minutes of tape on the machines so we continued normally on the air for 30 minutes. We would have never gone off the air at all except for the fact that the police required the building be evacuated and would not let anyone return until they had examined it thoroughly. We were back on the air essentially with normal broadcast operations by the next day.

The painful part of this, apart from the serious injuries suffered by our employees, is that we are going to have to do a lot of rebuilding and replacing of things not insured. We will have to install a very expensive security system which we never had before. This is the first time in 30 years that we have experienced any kind of an attempt like this on our installations. Overnight, we have to make changes. We cannot expect our employees to work in an unprotected situation. This requires, for example, replacement of the glass in the building with safety glass, which is very expensive. New window frames are going to have to be put in throughout the building to contain that glass.

We estimate, as Chairman Ablard said, at least two-thirds of the $3 million supplemental, $600,000 plus the $2.4 million relocation fund, will have to be spent just on bomb damage. In fact, this may run as high as 80 percent of the $3 million for bomb damage and related requirements such as a new security system. This will leave very little for the kind of restoration of programing we had hoped to make with this supplemental this year.

STATUS OF ONGOING POLICE INVESTIGATION

Senator WEICKER. Have they caught anybody? What is the situation here?

Mr. ABLARD. Munich and Bavarian Police have been very active in probing this. There have been 40 officers assigned to it. So far they have not turned up a culprit. There have been several claims from terrorist organizations.

Do you wish to add anything, Mr. Buell?

Mr. BUELL. No; I have nothing to add to that. The Bavarian Police have been very helpful throughout. They assigned extra police to us until we could hire our own additional security force. They provided dog patrols, and so forth. They are taking it seriously. We have a lot of support from Bavaria.

DESTRUCTIVE CAPACITY OF THE BOMB

Mr. ROBERTS. I might add, it was a highly sophisticated bomb, not one that could normally be fabricated in a basement with a chemistry set. That would indicate that it comes from people who have had experience in these matters.

Mr. BUELL. It is only by the grace of God that people were not killed or more seriously injured. On that day of the week and at that time of day we have only a skeleton staff in the building. There were 40 people in all including technicians and news personnel.

Senator WEICKER. How many normally are in the building?

Mr. BUELL. At any one time, there would be as many as 700, sir.

Senator WEICKER. And what time did this go off?

Mr. BUELL. At 9:47 p.m, Saturday.

PRINCIPAL SECURITY IMPROVEMENTS REQUIRED

Senator WEICKER. Have you also taken into account what you have to do in terms of security in other installations?

Mr. ABLARD. Yes, we have. In light of what happened, we have undertaken to upgrade security at sites outside of Munich where the transmitters are located, as well as at other RFE/RL transmitting sites in Europe.

Senator WEICKER. What is that going to cost? Is that in the figure you stated earlier?

Mr. ABLARD. Yes, Mr. Chairman.

SOLVENCY OF CURRENCY DEVALUATION FUND

Senator WEICKER. The requested appropriation for the BIB is $98.3 million, a decrease of $1,983,000 from 1981. Yet I note the request is based on more favorable currency exchange rate and on this basis represents a net increase of 13 percent. In addition, is it correct you have available $3.4 million in your currency devaluation fund?

Mr. ABLARD. Let me turn that over to Mr. Levin, sir.

Mr. LEVIN. That is correct, Mr. Chairman. We have the $3 million currency devaluation fund which was appropriated for use in fiscal year 1981 and which is highly unlikely to be used this year and $395,000 that was carried over from fiscal year 1980. So we have in the till $3,395,000 for losses due to currency devaluation. Of course, we are presently registering an across-the-board gain in all the foreign currencies in which we operate, and as of the end of March, this gain approached $5.2 million.

Senator WEICKER. Is that deposited in the Treasury?

Mr. LEVIN. Sir, the gain for all practical purposes remains in the Treasury. We forecast, at the beginning of the year, a gain because the dollar was appreciating against all three currencies, the Spanish peseta, the Portuguese escudo, and the West German mark. Consequently, we have been drawing down, through an estimated comprehensive financial plan which we established in cooperation with RFE/RL, Inc., less each month, knowing that this kind of money resulting from the gain could, indeed, be returned, or deferred, by the Office of Management and Budget. The money absolutely does remain in the Treasury today.

INTENDED USE OF ADDITIONAL RFE/RL PERSONNEL

Senator WEICKER. The current budget request is $4 million more than your January request. All of the increases are for operation of the radios. In addition to 11 new hires in 1981, you are requesting 25 positions in 1982. How will these positions be assigned?

Mr. ABLARD. Mr. Buell?

Mr. BUELL. Some of them will be to fill positions which we have had to leave vacant, for which we simply have had insufficient funds. We would like to hire personnel for several positions which we have wanted for over a period of 3 or 4 years to fill, such as an analyst for East Germany, in our RFE Research Department. It is a country which is of increasing importance in our broadcasting. We would also like to take on a special analyst for China. China is also very important. We would like to hire an archivist researcher to process the flood of documents which come from Poland of which we have not been able to take proper care. These are the types of positions we would like to have. In addition, we would like to undertake a modest expansion of Central Asian broadcasting, an area of increasing importance today. This will involve both new hires and training for some of the people we already have on board.

DERIVATION OF ESTIMATES OF LISTENERSHIP

Senator WEICKER. I see that you estimate that 70 percent of the adult population of Poland was listening to Radio Free Europe during the recent crisis. How are your estimates derived?

Mr. ABLARD. This is done through investigative efforts of the audience research activity that is carried on by the Radios in Paris and also in Munich.

Senator WEICKER. You don't have some person running around with a Nielsen survey here. How do you do this?

Mr. ROBERTS. Mr. Chairman, the Radios have contracted with a number of research organizations in Europe. If my memory is correct, about seven. These seven organizations interview people who come to the West. They are travelers, tourists, trade delegations and so on. The interview system is so elaborate and so sophisticated today that on the basis of 2,000 interviews, we can very readily deduce an audience estimate just as Dr. Gallup does in this country.

Senator WEICKER. I think the circumstances surrounding his operation are a little more favorable.

Mr. ROBERTS. Absolutely. But, Mr. Chairman, we have checked and rechecked over the years, particularly with regard to travelers from the Eastern European area, and have found our figures in Vienna to gibe with those from Stockholm, Paris, and London.

INTENSITY OF JAMMING

Senator WEICKER. Was there a significant increase of Soviet jamming during this period of broadcasts?

Mr. ROBERTS. Mr. Chairman, in Eastern Europe and the Soviet Union, it has not appreciably changed. It is fierce in the Soviet Union, somewhat less in Czechoslovakia and Bulgaria and, again, somewhat less than that in Poland.

Mr. ABLARD. In Hungary and Romania there is presently no such jamming.

NATURE OF RFE/RL BROADCASTS

Senator WEICKER. What is the nature of these broadcasts to Poland? Obviously I have a little concern, as do many, as to what the U.S. role is. I suppose my concern is I hear a lot of tough talk, and then I ask myself the question, what are you going to do about it? A lot of people ask themselves this question. If we don't do anything about it, then we lose our credibility. I am wondering what the nature of the broadcast is? Is it factual, or are you trying to add fuel to the fire?

Mr. ABLARD. The purpose of the Radios, of course, is to be a news outlet and not to generate news. We follow the program policy guidelines that have been established for the Board for International Broadcasting and RFE/RL. In international radio, Radio Free Europe and Radio Liberty are not surrogate radios of Polish or, for that matter, of any other group of émigrés. On the other hand, they are not like the Voice of America, the official U.S. voice representative of foreign policy of the United States, although they do not deviate from U.S. foreign policy interests.

As I said, they do not make the news, and if, for example, Secretary Weinberger makes a statement in Paris, that could be picked up and broadcast as long as it is confirmed by two independent sources. RFE/RL uses the same rule that the Voice of America does in this regard. That is if it is reported by AP, UPI, or Reuters, it is judged a confirmed piece of information that may be broadcast. There are, however, strict policy guidelines about not being provocative, not being demeaning, not causing rash actions, which is something the Radios learned during the Hungarian uprising in 1956. We monitor this very closely at the Board. We review program scripts. There are obviously bound to be some policy violations. These are hopefully picked up through the broadcast analysis personnel in Munich and elsewhere. Our embassies in the countries to which broadcasts are made are very much aware of the impact the Radios have in those countries. We at the Board receive copies of all official protests that are lodged with U.S. embassies.

In some cases they may have some merit, in which case the Radios are instructed to make certain changes in to what they are saying. Most of the time they do not have merit, but the ambassadors in all the Eastern European countries and the Soviet Union are very keenly aware of the impact RFE/RL broadcasts have in the countries in which they are serving.

Mr. Buell, do you want to expand on this subject?

A CALMING AND STABILIZING EFFECT OFTEN RESULTS

Mr. BUELL. In response to your concerns, Mr. Chairman, I think it could be said that in many ways Radio Free Europe has had a calming and stabilizing effect on developments in Poland. One of the reasons we have the large audiences which Mr. Ablard mentioned is because for over 30 years we have established a reputation for credibility. In 30 years, people living under that system in Poland and elsewhere have lost faith in their own media because they have been lied to so much, and they do look to Western radio to provide what they believe is objective reporting of the facts.

In certain identifiable cases, we have been able to report the facts at a time when rumors were sweeping the country about such things as an imminent invasion or crossing of the border by tanks, and topics of that nature. One of the dangers in Poland specifically is that confrontation could be set off by provocation, which would be in the interest of some.

ADDITIONAL COMMITTEE QUESTIONS

Senator **WEICKER**. I have other questions which I am going to go ahead and submit for response in the record.

Thank you very much, gentlemen.

[The following questions were not asked at the hearing but were submitted to the Board for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WEICKER

Budget Growth

QUESTION:

Over the last 10 years RFE/RL's budget has tripled. The January budget document indicated that the cost of doing business would grow to $126.5 million by fiscal year 1986. The current budget, however, indicated no growth with new obligational authority staying at $98.3 million in each of the next four years. Is this realistic?

ANSWER:

The out-year projections represent Government-wide policy by the Administration, and we expect that in time they will be revised. However, it should be pointed out that the tripling of RFE/RL budgets over the last decade was in large measure due to the devaluation of the dollar against the West German mark, Portuguese escudo and Spanish peseta between 1968 and 1980. The appreciation of the dollar in the past year has already significantly reduced FY 1981 outlays and should permit substantial growth in FY 1982 with fewer dollars than originally appropriated for the current year.

QUESTION:

Will the current $20 million modernization program be completed without any additional increases in funding?

ANSWER:

Apart from $200,000 requested because of the collapse of two antenna curtain arrays at Holzkirchen in December, the projects should be completed as planned.

QUESTION:

Are there plans for new capital outlays in increase technical capabilities? If so, what areas are expected to need capital improvement or expansion? What is the projected cost?

ANSWER:

Security of facilities in the Middle East is the immediate priority. Cost estimates will be available once the necessary diplomatic negotiations have been completed. We shall, of course, keep the Subcommittee fully apprised of any and all developments in this area as they occur.

QUESTION:

Will RFE/RL be able to meet pension outlays which can expect to be heavy in the 1980's due to the age of the staff?

ANSWER:

We believe these obligations can be funded on a year-to-year basis.

QUESTION:

Are there other long-range liabilities that have not been fully addressed?

ANSWER:

There are no others.

BIB-RFE/RL Relationship

QUESTION:

Since the establishment of the BIB, there have been problems in BIB exercising its oversight responsibilities due to poor communication between BIB and RFE/RL and lack of guidelines to govern the relationship. In February 1980, regulations were adopted by the BIB to clarify the roles and operations of the respective parties.

Now that your regulations have been put into force, how would you assess the relationship between BIB and RFE/RL?

ANSWER:

There are always tensions between an oversight and an operating organization, but the regulations adopted a year ago have reduced the areas of problems.

QUESTION:

Is there a need to provide more definitive legislation to permit effective BIB oversight? If so, would you elaborate as to what legislative changes are needed?

ANSWER:

We expect that the relationship will be reviewed once three new Board Members have been appointed, confirmed and have had an opportunity to assess matters.

Jamming

QUESTION:

RFE/RL broadcasts 469 hours weekly to the Soviet Union. The broadcasts to the Soviet Union are subjected to continuous jamming. The BIB reported in its Seventh Annual Report (1981) that Soviet jamming techniques at times can make listening impossible or virtually impossible. $20 million has been spent to modernize RFE/RL transmitters to improve reception.

What percentage of Radio Liberty's 469 broadcast hours would you estimate penetrates the jamming sufficiently strongly enough to be understood by the listening audience? What percentage of the population would hear broadcasts that are clearly audible and penetrate the jamming?

ANSWER:

Geography rather than time periods, determines penetration of jamming, which is most effective in major metropolitan areas, least so in the countryside. When the Voice of America was not jammed (1963-69, 1973-80), an estimated 13-to-19 per cent of the Soviet adult population listened to it in the course of a typical week. The most recent estimate for RL listenership is 7.6 per cent of the adult population in the course of a typical week. However, among Soviet citizens with more than eight years of schooling, the proportion of RL listeners is estimated at 13.9 per cent. These survey results indicate that the broadcasts do get through in many areas of the U.S.S.R.

QUESTION:

With the $20 million in capital improvements, will the audibility of the broadcasts be improved?

ANSWER:

Definitely. As the Subcommittee is aware, the $20 million appropriated for technical modernization since 1975 was expended in two phases. After the first of these (1975-77), audience research showed that a decline in RL listenership apparent since 1973 had been arrested and (more recently) reversed. We expect similar improvement once the new 250-kilowatt transmitters in West Germany and Portugal are operational; eight of these eleven are earmarked for broadcasts to the U.S.S.R.

QUESTION:

Is the jamming only during certain types of programs?

ANSWER:

No, it is unremitting.

Cost of Broadcasts to the Soviet Union

QUESTION:

What is the cost (per language service) of broadcasts to the Soviet Union?

ANSWER:

If all infrastructure costs are allocated in proportion to program staff expenditures, it is estimated that somewhat more than a third of the RFE/RL budget goes to Soviet-area broadcasts. About half of that is for Russian broadcasts, the other half for the 14 non-Russian languages.

Current Balance of RFE and RL Programming

QUESTION:

In view of the heavy Soviet jamming, the high cost of broadcasts to the Soviet Union, the poor audibility of broadcasts and larger listener audience of VOA and BBC (British Broadcasting Corporation) in the Soviet Union, what consideration has been given to shifting a part of your limited resources to increasing the broadcast in the Eastern European countries?

ANSWER:

Priorities are under constant review. However, East European audiences are quite high, and RFE schedules to that area are extensive. Two-fifths of RL listeners do not hear other Western broadcasts.

Travel Increase

QUESTION:

The BIB is requesting $96,000 this year for travel and transportation. I realize this may seem to be a rather insignificant amount in the great scheme of things; however, it is an increase of more than 50% over last year. What is the reason for this increase?

ANSWER:

The number of trips anticipated in fiscal year 1982 does not vary significantly when compared to fiscal years 1980 and 1981. However, the per diem cost and airline passenger fares have risen up to 50% in some areas. For example, the per diem rate in Washington, D.C., to which non-resident BIB Members must travel frequently during the course of a given fiscal year, rose from $50 per day to $75 per day in fiscal year 1981. The overseas per diem rates and domestic and international airline passenger fares are similarly inflationary.

A substantial portion of our requested $34,000 travel increase (approximately 44% or $15,000) for fiscal year 1982 is to fund the BIB's participation with the International Communication Agency at the International Radio Consultative Committee and European Broadcasting Union meetings to coordinate U.S. positions and gain the support of key foreign countries with regard to international broadcasting in preparation for the High Frequency Broadcasting Conference (HFBC) of 1983.

QUESTION:

Will you give us, for the record, a comparison of the estimated number of trips budgeted for travel compared to the last two fiscal years?

ANSWER:

The requested information follows:

	FY 1980 2/	FY 1981	FY 1982
Domestic			
Board Members: 1/			
Number	35	36	36
Amount	16,272	18,000	22,000
Board Staff:			
Number	12	4	5
Amount	7,312	2,000	3,000
Overseas			
Board Members:			
Number	6	6	7
Amount	15,578	17,000	22,000
Board Staff			
Number	16	9	12
Amount	38,252	25,000	34,000
HFBC	---	---	3
Amount	---	---	15,000
TOTALS:			
Number	69	55	63
Amount	77,414	62,000	96,000

1/ Board Chairman resided in Austin, Texas.
2/ This column is actual.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Projected Foreign Currency Gain

QUESTION:

Your 1981 appropriation of $99,700,000 was based on exchange rates of one dollar to 1.74 West German marks, 49.79 Portuguese escudos and 65.99 Spanish pesetas. Your statement testifies to the significant appreciation of the dollar; in fact, we are informed the average rates of your currency purchases for the first 6 months of fiscal 1981 have been one dollar to 1.98 marks, 53.43 escudos and 80.11 pesetas. In view of these gains, it would appear that the Radios could mount the 1981 program level for at least $4,000,000 and maybe as much as $11,000,000 less than originally budgeted.

Does the Board plan to defer the excess in the 1981 appropriation due to the currency gains as required by Section 8 of Public Law 93-129?

ANSWER:

Under current legislation (Section 8(b) of Public Law 93-129), the Director of the Office of Management and Budget must place in reserve any amount appropriated which, because of upward fluctuations in foreign currency exchange rates, is in excess of the amount necessary to maintain the budgeted level of operation for RFE/RL, Inc. The Director of OMB then informs the Congress of this deferral. If there are losses due to downward fluctuations in foreign currency exchange rates in subsequent quarters, they will first be compensated from the moneys that have been deferred. If at the beginning of the fourth quarter in a given fiscal year, currency gains remain deferred, the President will propose to the Congress rescission of those funds.

QUESTION:

If these gains were available to the Board, how would you use them?

ANSWER:

The net foreign currency gain for the first two quarters (i.e., through March 31, 1981) of fiscal year 1981 totaled $4,956,079. The gain for the entire fiscal year is currently projected to be between $11 and $12 million.

RFE/RL, Inc. could expend additional moneys between now and September 30, 1981 by obligating funds as of September 30, 1981 for expansion and/or modernization of transmitter sites.

For example, had there been no bombing of RFE/RL headquarters in Munich, $500,000 of the $3 million fiscal year 1981 supplemental request would have been used for the purchase and installation at Holzkirchen of a 150-kW medium-wave transmitter.

Before the bombing, RFE/RL, Inc. submitted to the BIB a list of possible program improvements which, however, have not been evaluated thoroughly by the BIB. Attached is that list.

RFE/RL, INC.

FY 1981 Supplemental Request

1.	150 KW medium wave transmitter - Holzkirchen		$ 500,000
2.	Additional power - Gloria transmitter site		300,000
3.	Additional spare parts/tubes for the Holzkirchen and Gloria transmitter sites		100,000
4.	Expansion of computer capabilities		
	A. Hardware	$ 170,000	
	B. Software (contracted)	50,000	220,000
5.	Extension of housing allowance (unified working conditions)		72,000
6.	Extra Polish Service actions (free lance, Pope's trip coverage, temporary employments, etc.)		65,000
7.	Promotions (pending labor court case actions and long deferred promotions due to lack of funds)		103,000
8.	Mutual Agreement Termination Program (severance/early retirement)		250,000
9.	Management training program (talent opportunity hires)		100,000
10.	Crucial maintenance at the Munich Office building		110,000
11.	Hires to fill existing vacancies and high priority new positions (23 positions)		
	A. Broadcast Analysis Department - 1 Armenian/Georgian Analyst and 1 Romanian Analyst	$ 29,000	
	B. RL Research - 1 Baltic Analyst, 3 Screeners 1 Soviet Literary/Cultural Analyst	55,000	
	C. Central News Department - 1 Full-Time Secretary in Rome, 2 Editors, Feature Desk; 1 Teleype Operator - Washington, 1 Jr. Empl. for Cross Report Unit	56,000	
	D. 2 Ukrainian Editors	$ 35,000	
	E. Personnel Assistant - Washington	7,000	
	F. Research Assistant - Washington	12,000	
	G. Assistant to Director of Engineering - New York	18,000	
	H. Assistant to Station Manager - Spain	20,000	
	I. Project Engineer - Munich	22,000	
	J. Systems Programmer/Systems Analyst	40,000	
	K. East German Analyst	21,000	

	L	Samizdat Archivist/Polish Research Analyst	15,000	
	M.	Polish Service - Supervising Program Editor	23,000	
		One-time recruiting, travel and transportation costs	100,000	
				$ 453,000
12.		Professional services and miscellaneous freelance		
	A.	Office of Executive Vice President Programs and Policy - special roundtable discussions and outside professional services, conference attendance for Programs and Policy personnel	42,000	
	B.	Soviet Area Audience and Opinion Research - increase interview base from 1,070 to 1,700	110,000	
	C.	East European Audience and Opinion Research-Bulgarian Processor and Analyst (freelancer) and Administrative freelance	13,000	
	D.	Library/Archives - increase in cost of books and periodicals including additional freelance/travel	39,000	
	E.	Radio Free Europe Division - 20 percent increase in freelance and 30 percent increase in travel allocation	140,000	
				344,000
13.		Central Asian Enhancement (6 positions)		
	A.	Additional Staff - Munich		
		Recruiting, travel, advertising	$ 25,000	
		One Program Supervisor - L 13/01 6 months	28,000	
		One Research Analyst - L 11/01 3 months	12,000	
		One Broadcast Analyst - L 12/01 3 months	13,000	
		Three Programmers or Program Trainees L 10/01 3 months	30,000	
	B.	Mid-East Correspondent Bureau (3 positions)		
		One News Correspondent (English language) L 13/01 5 months	21,000	
		One Correspondent (Turkic language) L 11/01 3 months	11,000	
		One Secretary L 9/01 5 months	13,000	
		Estimated support and start-up costs	100,000	$ 253,000
14.		Administrative and Technical Capital - New York and Washington		155,000
15.		Replacement of Munich building power wiring which no longer meets local safety standards		170,000
				$3,195,000

Proper Use of Appropriated Funds

QUESTION:

How can the Subcommittee be assured that the gains will be used for program enhancements and not be used to enhance the salaries and benefits of the RFE/RL staff?

ANSWER:

Funds are expended by RFE/RL, Inc. in accordance with the purpose for which they are granted. The following control and audit procedures exist which verify this fact:

- RFE/RL is subject to annual audits by an independent public accounting firm, currently Arthur Andersen & Co.
- RFE/RL is subject to periodic audits by the U.S. General Accounting Office, which makes the same kind of comparisons as noted above.
- The Rules of Procedure of the Board for International Broadcasting Regulations, offically promulgated on February 21, 1980, give the BIB financial oversight powers and access to detailed information which would (if necessary) preclude any misappropriation of Federal funds.

Foreign Currency Rates Budgeted for FY 81 and FY 82

QUESTION:

Similarly, the 1982 request is based on the dollar buying 1.93 marks, 52 escudos and 76.55 pesetas, respectively.

Are those rates realistic, since your purchases for the first 6 months of 1981 have averaged a considerably higher rate of those currencies to the dollar?

What rates should now be used for 1982, and how much can the 1982 request be reduced without changing the program level budgeted for 1982?

ANSWER:

Purchases of foreign currencies during the first six months of fiscal year 1981 have averaged at the rates of West German mark 1.9807, Portuguese escudo 53.4270 and Spanish peseta 80.1060, yielding a year-to-date net gain of $4,956,079. If these rates prevailed in fiscal year 1982, for example, the currency gain would amount to $2,200,000 based on the proposed fiscal year 1982 budget rates of marks 1.93, escudo 52 and peseta 76.55.

The fiscal year 1982 budget request could therefore be reduced by this $2,200,000 without any effect on the program level.

Necessity of RFE/RL Vienna Office

QUESTION:

Why do the Radios maintain offices in Brussels and Rome instead of Vienna, which is a center of Eastern Europe refugee activity?

ANSWER:

Vienna is easily accessible to Munich (less than an hour by air, six hours by train or auto), and RFE/RL correspondents for Munich frequently go there on short-term assignments. Furthermore, several of the language services have "stringers", or part-time correspondents, in Vienna. Brussels is the seat of the European Communities and the North Atlantic Treaty Organization. Rome is the focus of the Roman Catholic Church and seat of the West's most important Communist movement.

Presidential Appointments to the Board

QUESTION:

We have a chart that indicates that several Board members are serving long after their terms expired. In view of the Reagan Administration's apparent priority for the Radios, as witnessed by the 1982 budget increase over the amount originally requested by President Carter, it would seem that the Administration would be moving swiftly on appointing the Board Members. Is there anything you can tell us about when the appointments will be made?

ANSWER:

We understand that they will soon be made.

Installation Difficulties at Holzkirchen

QUESTION:

Why does it cost $200,000 to repair the antenna curtain arrays at Holzkirchen that apparently collapsed due to defective parts? Shouldn't the manufacturer be held responsible?

ANSWER:

The estimate of $200,000 for repair of the Holzkirchen antennas is based upon actual cost of material to replace items damaged beyond repair as well as labor and other peripheral costs which will be incurred in rebuilding the antennas, which is a matter of priority.

RFE/RL Inc. is preparing engineering data for use by General Services Administration attorneys, who will deal directly with the manufacturer of the defective fiberglass component. Tests are still being conducted on the material in question in order to determine the exact reason for the failure.

A Dun & Bradstreet report on the firm that provided the material which failed indicates that its assets would be inadequate to cover a damage claim of this magnitude.

Bombing of RFE/RL Munich Headquarters

QUESTION:

Please outline the damages caused by the bomb explosion in Munich on February 21.

Do we know who did the bombing?

What is being done to prevent further bombings?

What is the total costs of the damages?

How much was covered by insurance?

ANSWER:

Identity of the person(s) who bombed the RFE/RL headquarters building in Munich on February 21 is not known. Bavarian State criminal police who are conducting the investigation have reported that the attack was carried out in a professional, military-like manner. Police officials have stated the methodology used in placing an estimated 20 kilos of plastic explosive material against an exterior wall is not similar to that used previously in terrorist attacks in West Germany.

Guard service was doubled immediately at the headquarters building and all transmitter sites in West Germany. Trained watch dogs are being used. Munich police have provided additional temporary help while working with RFE/RL management in determining permanent security improvements which are needed. U.S. State Department and private American physical security experts are assisting in designing an increased security system for all RFE/RL installations in Western Europe, taking into account transmitter sites in Spain and Portugal. Necessary security needs include: additional walls and fencing; introduction of a television monitoring system; installation of exterior lighting; and electronic detection devices.

Total cost of damage is estimated at 3,500,000 West German marks (or slightly over $2 million at the DM 1.74 budgeted rate). Of this amount, 3,100,000 West German marks (or nearly $1.8 million) are covered by insurance.

The following copy of an RFE/RL, Inc. memorandum deals with the bomb damage and the cost of items which appear not to be covered by insurance:

RFE/RL, Inc. MEMORANDUM

Date: 10 March 1981

TO: Mr. A. Russell Poole

SUBJECT: Report on Bomb Damage and Cost of Items not Covered by Insurance which are Related to the Current Emergency

FROM: Robert Breen

Estimated damage caused by bomb:

		Amount	
1.	Building	$ 919,500	
2.	Building contents	862,100	
3.	Telephone system	287,400	$ 2,069,000

The above costs will be reimbursed to us by our insurers.

The uninsured costs and extra security measures are as follows:

1.A.	Replacement of normal glass with safety glass in damaged wings B, C, and N		12,600
1.B.	Safety glass for all other windows except for areas where bullet proof glass being installed	244,300	
	Replacement of rotten window frames necessary for installation of safety glass (100)	57,500	
	Bullet proof glass for master control-news-monitoring-telex room-print shop	114,900	416,700
1.C.	Special ventilation for telephone switching room (replaces special construction of bunker)		5,700
1.D	Technical Presently listed are 96 pieces of technical fixed assets, completely destroyed. Replacement costs, partly to be absorbed by the company, because of a sophisticated technology, representing an improvement of value (replacements of outdated items are no longer available on the market). Such pieces of equipment are Ampex and Revox recorders, Magnecorders. T&Y printers and particularly work benches. Shares to be absorbed are to be negotiated for each item. 96 times $503.00(average)	48,300	
	Replacement of spare parts, repair and maintenance items on a contingency basis amount to approximately	32,200	80,500
	Administrative - Wings N, B, C		
	Heating	$ 17,200	
	Carpeting	28,700	
	Light fixtures	28,700	
	Misc. office equipment	43,200	
	Typewriter repair or replacement - yet to be determined	46,000	$ 163,800

		Amount	
	Private property - Insurance coverage exists for an amount of $115.00-per employee; a legal liability does not apply. However, due to the special circumstances, the company may feel obliged to reimburse hardship cases, such as leather coat of the telephone operator on duty ($1,437.00), damaged private cars of employees and non-employees, parked outside RFE/RL's parking space (ranging from $375.00 to $2,300.00) and other personal items costing in excess of $115.00.		28,700
1.E.	Emergency Tape Feed Center - 18 Meqnecorder tape recorders 10 Revox tape recorders 1 Crossbar switching unit complete with amplifiers Installation material		181,000
1.F.	Main Entrance Reception Area - In order to determine cost of this item the U.S. Consulate was contacted and based on the costs of its special reception area which it constructed about 5 years ago we arrived at the figure of		172,400
2.	Telephone Uninsured cost for replacement of switchboard	46,000	
	Replacement of approximately 650 instruments and peripheral equipment	186,800	232,800
3.A.	Contractual guard services for 6 months period at Munich, Schleissheim, Holzkirchen, Biblis and Lampertheim		603,400
3.B.	Extension of wall and modification of EG building fence		114,900
	New Item - Modernization and remodeling of B, C, and N wings for maximum space utilization and necessary modification for installation of word processing (ment		43,200
3.C.	Additional exterior lighting for EG building/TV monitoring - cameras and installation of lighting equipment	$ 106,300	
	Additional stand-by lighting facilities	35,600	
	Outside cable installation	43,100	$ 185,000
3.D.	Fence and barbed wire - Holzkirchen		14,400
3.E.	Road extension inside wall (EG building)		48,900
4.	Moving costs - disposal of building rubble and cost of moving various offices within the EG building		51,700
5.	Replacement of Megadata terminals		202,900
6.	Holzkirchen antenna reconstruction		172,400
7.	Temporary Personnel		
	A. Czechoslovak Service news editor (replacing injured editor)		11,500
	B. Other temporary employees		28,700
	C. Three temporary guards		14,400
	D. Additional overtime (Czechoslovak Service plus other offices affected by emergency)		23,000
	TOTAL		$ 2,808,600

Relocation of RFE/RL Personnel

QUESTION:

Why did the Reagan Administration decide not to move 45 to 60 employees from Munich to the United States?

Was this policy change recommeded by the Board?

The relocation was mainly the idea of the Foreign Relations Committee. Has this change been presented to them?

ANSWER:

The Administration has not explained its reasoning in writing. However, it appears that it shared the view of RFE/RL management that such transfers might be disruptive at this time. The Board did not recommend this change. The matter has been discussed with the Committee on Foreign Relations at the April 8 BIB budget hearing.

Funds Budgeted for Pre-1976 Retirees' Pension Increases

QUESTION:

Are there any funds budgeted to recompute the pensions of the Radio personnel who retired before July 1, 1976? If no, why not?

ANSWER:

Such funds have not been budgeted because, until now, the Office of Management and Budget has determined that available funding has been required for essential operational needs. The Foreign Affairs Budget Review, in its examination of the BIB fiscal year 1982 budget request, rendered a similar judgment in this regard.

Broadcasts to Poland

QUESTION:

What has been the main thrust of the Radios' programming to Poland during the critical days of the last week?

ANSWER:

RFE programming to Poland has stressed comprehensive, accurate information; editorial commentaries stressed the need for conciliation and dialogue rather than confrontation.

QUESTION:

How has the Board assured that the Radios do not over-promise United States assistance to Poland?

ANSWER:

The Board has accomplished this through discussions with RFE/RL management, which is fully aware of U.S. policy objectives, and through post-audits of actual programs.

Level of Broadcasting to Soviet Central Asia

QUESTION:

What is the current level of broadcasting by the Radios to the Moslem population of Soviet Central Asia?

ANSWER:

Radio Liberty broadcasts daily in the vernacular languages of the five Soviet republics comprising the area: Uzbek, Kazak, Turkmen, Kirghiz, Tajik. It also broadcasts daily in the languages of other nearby Muslim populations: Azeris, Tatars and Bashkirs.

QUESTION:

How effective is the signal of the Radios in the area?

ANSWER:

There is a considerable body of evidence that the broadcasts have an audience in the area. However, by the minimum technical standards adopted for a Presidential study of broadcasting to the Soviet Union, the strength of the signal in Soviet Central Asia is far from adequate.

QUESTION:

What specifically is planned to upgrade the broadcasts to Soviet Central Asia?

ANSWER:

We have a twofold plan: (1) to enhance the quality of the program through recruitment, where feasible, of qualified managers, researchers and programmers; and (2) establishment of a facility in the Middle East for better technical penetration of the area. Enhancement of program quality is hindered by the unavailability of personnel with some of the required language and area skills, and special training programs are envisaged.

Broadcasts to Iran

QUESTION:

What programming, if any, do the Radios transmit to Iran?

ANSWER:

The Radios do not broadcast to Iran.

SUBCOMMITTEE RECESS

Senator **Weicker**. The subcommittee will recess until tomorrow at 9:30 when we hear testimony from the Securities and Exchange Commission, U.S. Trade Representative and Equal Employment Opportunity Commission.

[Whereupon, at 11:04 a.m., Tuesday, April 7, the subcommittee was recessed to reconvene at 9:30 a.m., Wednesday, April 8.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

WEDNESDAY, APRIL 8, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:37 a.m., in room S–146, the Capitol, Hon. Lowell P. Weicker, Jr. (chairman) presiding.

Present: Senators Weicker and Hollings.

SECURITIES AND EXCHANGE COMMISSION

STATEMENT OF PHILIP A. LOOMIS, JR., ACTING CHAIRMAN

ACCOMPANIED BY:
- GEORGE G. KUNDAHL, DEPUTY EXECUTIVE DIRECTOR
- LAWRENCE H. HAYNES, COMPTROLLER
- STEPHEN J. FRIEDMAN, COMMISSIONER
- BARBARA S. THOMAS, COMMISSIONER
- BENJAMIN MILK, EXECUTIVE DIRECTOR
- EDWARD F. GREENE, DIRECTOR, DIVISION OF CORPORATION FINANCE
- DAVID P. DOHERTY, ASSOCIATE DIRECTOR, DIVISION OF ENFORCEMENT
- DOUGLAS SCARFF, DIRECTOR, DIVISION OF MARKET REGULATION
- RICHARD W. GRANT, SPECIAL COUNSEL TO THE DIRECTOR, DIVISION OF INVESTMENT MANAGEMENT
- AARON LEVY, DIRECTOR, DIVISION OF CORPORATE REGULATION
- PAUL GONSON, SOLICITOR TO THE COMMISSION
- A. CLARENCE SAMPSON, CHIEF ACCOUNTANT
- JEFFRY L. DAVIS, ACTING DIRECTOR, DIRECTORATE OF ECONOMIC AND POLICY ANALYSIS

BUDGET REQUEST

Senator WEICKER. Our next request is that of the Securities and Exchange Commission. The amount requested is $82,836,000, representing a reduction of 39 permanent positions and an increase of $2,591,000 for the revised 198[illegible] base. Included is $2.8 million for consolidated headquarters.

Appearing on behalf of this request is Philip Loomis, Acting Chairman, accompanied by George Kundahl, Deputy Executive Director, and Lawrence Haynes, Comptroller.

PREPARED STATEMENT

Mr. Loomis, we will be pleased to go ahead and have your statement in its entirety put in the record at this point, and we will be glad to hear your comments on it.

[The statement follows:]

STATEMENT OF PHILIP A. LOOMIS, JR.

Mr. Chairman and Members of the Subcommittee, I am pleased to have the opportunity to meet with you today to discuss the resource requirements of the Securities and Exchange Commission. I am appearing before you today as the appointed Acting Chairman. I am here with two other Commissioners and a number of the senior managers of the Commission to explain the Commission's fiscal 1982 programs, as provided for in the revised budget estimate submitted by President Reagan, and to answer any questions which you may have.

At the outset I would like to express our collective support for the goal of a national economic revitalization. We believe that the Securities and Exchange Commission has an extremely important role to play in that process. Indeed, a fundamental objective of the Congress in enacting the Federal securities laws, and creating the Commission, was to promote public confidence in the securities markets in order to foster the vital process by which capital is marshalled from the public and channelled into the growth of our economy. At the same time, we appreciate and support the President's efforts to slow down growth in the Federal budget, and we recognize that the cuts in the Commission's activity level proposed by President Reagan may be necessary to achieve this greater objective. With that background in mind, I will turn to the revised budget estimates that are before you today.

They are the product of almost six months of discussions between our staff and that of the Office of Management and Budget. As you know, initial requests were due at OMB in early September, 1980. It was several weeks after Thanksgiving that a series of meetings with OMB officials culminated in the decisions reflected in former President Carter's original fiscal 1982 budget. The justification materials explaining that budget were transmitted to the Subcommittee in late

January, 1981 and serve as the foundation for the discussions which we will have today. I respectfully request that the original justification materials be entered into the record at this time.

Subsequent to the submission of those documents, OMB took another look at the 1982 budget as a part of President Reagan's overall effort to decrease Federal expenditures. In terms of raw numbers, the differences between the two budgets for the Securities and Exchange Commission represent a reduction of 159 positions and $5,724,000 in fiscal 1982. In addition, the Commission identified a savings of $530,000 in non-personnel costs in 1981 that will be applied to help offset the supplemental appropriation for pay, now pending before this Subcommitee.

The specific impact of this budget, allocated by program area, is addressed in our "Revisions to Budget Estimate, Fiscal 1982," which I also request be entered into the official record. It should be noted that President Reagan did not designate particular program areas for reductions at the Commission.

Therefore, I think it would be appropriate to briefly describe how we intend to reallocate our resources. Our initial plan, basically, is to decrease staffing levels, more or less evenly, throughout the operating divisions and offices. Of course, it is impossible to state with absolute certainty what problems may arise in FY-1982. Before and during FY-1982 we will reassess our resource requirements and, with the knowledge of the Committee, reallocate our resources to where they are needed most. Currently, we are not targeting any particular programs for elimination. Instead, we are asking each of our divisions and offices to continue their current programs, although we recognize that our effectiveness in all areas will be reduced to the extent that our presence in those areas is reduced.

I would cite to you examples from three of our well-known programs. As you know, disclosure is the heart of the Federal securities laws, and the Division of Corporation Finance has primary responsibility for reviewing corporate disclosure documents. This program has considerable support from the business and legal community, and from the investing public. However, it has been quite some time since we were able to do all that we would like to do, or that the business community would like to have us do, in the way of reviewing and commenting on filed documents. In an effort to reconcile our dwindling resource base with the growing number of filings, we recently reorganized that Division, instituted quality control techniques, and incorporated current computer technology into its processes. Still, we have had to switch to an "audit mode" of review in order to have sufficient personnel to scrutinize just the "key" filings, and we do not even look at the great majority of routine documents. The current state of the capital market, which is characterized by rapidly fluctuating interest rates and uncertainties in the stock market, makes it essential that security offerings come to market quickly once a company decides to make an issuance, and that, in turn, requires prompt review of the documents by our staff. Yet, under the new proposed budget, the staff of the Division of Corporation Finance will be 5% smaller in FY-1982 than it was under the budget submitted by the previous administration, which cannot help but have an effect on the way and the effectiveness with which that Division performs its functions.

A second example is the effect on our program to prevent and suppress fraud. Here the reduction in the Division of Enforcement will be from the 201 positions proposed in the previously submitted 1982 budget to 185 positions in the budget before you today. This does not mean, for example, that our program to deter insider trading, a pernicious practice, will come to an end. It does mean, however, that we will have less ability to investigate and prosecute that type of illegal activity and other alleged frauds than would be the case if current staffing levels were maintained.

Finally, a third area that will be affected is our program to oversee and regulate the securities markets. As you know, the Securities and Exchange Commission is charged with the responsibility to ensure that Self Regulatory Organizations, which are private entities that include among their number stock and option exchanges, conduct their activities in accordance with the public interest. To accomplish this end, the Congress has established a scheme in which those organizations exercise self-regulatory authority under oversight supervision by the Commission. In this connection, all Self Regulatory Organizations must obtain our approval before they can change the rules that determine how they conduct their business. The Division of Market Regulation, which has line responsibility for this program, will experience a net reduction of twelve people from the proposed 1982 budget. We anticipate that this personnel reduction will result, among other things, in delays in processing certain rule changes that are not currently experienced.

In order to appreciate the significance of these examples, it must be noted that the size of the Commission's staff today is smaller than it was in 1975. This is so despite the fact that since that time the Congress has substantially increased our responsibilities. For example, last fall the Congress enacted the Small Business Investment Incentive Act of 1980, which places significant new responsibilities upon the Commission. As this Subcommittee may recall, then Chairman Harold Williams appeared before you one year ago and indicated the Commission's view that the Commission's resource levels at that time were inadequate to fully and successfully carry out the Commission's statutory mandate. It would be disingenuous for me to tell you today that those concerns are no longer relevant or accurate. And I must point out that if the Commission suffers further significant reductions the

Commission will not be in the position to carry out its mission in an acceptable manner. Like the family or business which faces the prospect of inadequate financial resources, belt tightening, postponing the accomplishment of objectives, economizing, and increased efficiencies can only sustain the Commission for so long. At some point, inadequate resources for the Securities and Exchange Commission may impair the functions of the securities markets and the capital formation process on which this Nation's hopes for economic revitalization so crucially depend.

The members and staff of the Securities and Exchange Commission quite naturally believe that the responsibilities with which the Congress has charged us are important ones. We are hopeful that, with the limited resources allocated to the Commission, we will continue to be able to carry out our key programs at an acceptable level. Any decrease from the current level of resources necessarily is viewed by us as reducing somewhat the Commission's ability to discharge its responsibilities in a timely fashion.

We also recognize, however, that the cuts in the Commission's appropriations proposed by President Reagan are justified at this time to achieve the broader objective of revitalizing the Nation's economy. In that spirit, we are prepared to contribute our most creative efforts in order to maximize the benefits derived from those resources which are appropriated to us.

Mr. Chairman, that completes my prepared statement. We would be pleased to answer any questions which you or members of the Subcommittee may have.

LETTER FROM JOHN S. R. SHAD

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received the following letter from John S. R. Shad, Chairman, Securities and Exchange Commission regarding follow-up information from the new Chairman of the Commission. Also included is a list of developments regarding the consolidated SEC headquarters. By direction of the chairman the letter has been printed in the record.]

[The information follows:]

June 24, 1981

The Honorable Lowell P. Weicker, Jr.
Chairman
Subcommittee on State, Justice, Commerce,
the Judiciary, and Related Agencies
Senate Appropriations Committee
United States Senate
Washington, D. C. 20510

Dear Chairman Weicker:

During your Subcommittee's hearing last March on the Commission's fiscal 1982 budget, you asked Acting Chairman Loomis to describe the Commission's priorities. Commissioner Loomis suggested that a response to that question be delayed pending my arrival as Chairman. Described below are four priority areas:

> Regulatory Reform. It is vital that the Commission conduct a comprehensive review of the regulatory system it administers with a view to minimizing the burdens of compliance wherever possible. The integration of the disclosure schemes under the Securities Act of 1933 and the Securities Exchange Act of 1934, a process which is already well underway, is one excellent example of this type of review. The same kind of review will be extended to other areas, and duplicative and unnecessarily complex existing rules eliminated or simplified. In addition, the Commission will study other ways of further reducing the burden of regulation on those entities under its jurisdiction -- for example, by proposing the creation of new self-regulators in the investment company and investment adviser areas. Another important regulatory reform objective will be to strengthen the Commission's ability to engage in cost-benefit analysis in order that the Commission will be able to evaluate the economic consequences of both its existing rules and of any new rules which may come under consideration in the future.
>
> Capital Formation. Stimulating business expansion and investment is a major national goal. The Commission has a role to play in that process by simplifying and expediting the raising of capital. In addition, Congress has directed the Commission to convene a major forum on capital formation, particularly with respect to small businesses.

Regulatory Efficiency. The Commission is committed to improving the overall efficiency and effectiveness of its internal operations. Progress has already been made in the areas of selective review of filings, information automation, storage and retrival systems, and conversion from paper to microfilm records. Further improvements in the Commission's efficiency and productivity are possible.

Law Enforcement. I am personally committed to effective enforcement of the federal securities laws. The large majority of those in the securities industry and business community are honest and ethical. It is important that the Commission focus its attention on the small minority which do not adhere to high standards. Two areas of particular concern are the vigorous prosecution of insider trading and of the activities of organized crime as they affect the securities industry and publicly traded corporations. Similarly, speculative excesses and manipulation in the new issue and options markets have stretched the capacity of the the Commission's limited enforcement resources.

With specific respect to the Commission's fiscal 1982 budget, there are two areas of concern. First, although the Commission is doing everything it can to minimize its travel needs, an effective law enforcement program necessarily requires a certain amount of travel. While the 1982 budget reflects a small increase in travel funds, that increase will not be sufficient to cover increased travel costs. Thus, in effect, the fiscal 1982 budget will result in a decrease of approximately 20 percent in Commission travel. Such a decrease could have a significant impact to the Commission's law enforcement program. The Congress has already indicated its concern over the consequences of reduced travel on other law enforcement programs and may wish to afford similar consideration in its review of the Commission's budget.

Second, the Small Business Incentive Act, enacted late in the 96th Congress, requires the Commission to conduct two annual conferences concerning capital formation and small business during 1982. At the time of the passage of that Act, you recommended the addition of $750,000 to the Commission's budget in order to fund these conferences. That additional funding was, however, not enacted, and, in light of the other demands on our 1982 budget, I am concerned about the Commission's ability to conduct conferences of the scope and sophistication which I believe is essential.

The Subcommittee, and you personally, have always dealt with the Commission fairly and with sensitivity to our statutory responsibilities. I am looking forward to working with you during my tenure as Chairman, and I appreciate this opportunity to share my views concerning the future direction of the Commission. If I can provide any further information, please feel free to call on me.

Sincerely,

JShad

John S.R. Shad
Chairman

Developments Regarding Consolidated SEC Headquarters

July 1, 1971 - SEC Executive Director A. Jones Yorke first met with GSA Director of Space Management to discuss impact of SEC growth on agency's space requirements.

November 29, 1971 to March 7, 1972 - Series of meetings and urgent request resulted in GSA assigning to SEC 32,662 square feet of space (including parking space) at 1100 L Street, N.W., with occupancy scheduled for April 15, 1972.

March 16, 1972 - GSA notified SEC there would be some delay due to necessity of making alterations and obtaining permission from building owner.

April 20, 1972 - SEC Chairman Casey wrote GSA Administrator Kreger regarding need for larger headquarters building by mid-1974.

August, 1972 - Disbursed several offices to 1100 L Street, N.W.
  - Public Reference Room, main file room, Office of Administrative Law Judges and Opinions and Review, and part of the Directorate of Economic and Policy Analysis, and Office of Applications and Report Services (formerly named Office of Registrations and Reports).

September, 1972 - GSA assigned to SEC an additional 11,875 square feet at 1100 L Street (including parking spaces).

November 3, 1972 - Chairman Casey again wrote GSA requesting "assistance in accelerating request," and indicating need for space would "become critical by the end of 1974."

December 4, 1972 - GSA responded they would meet need with a "purchase contract project" and requested GSA Form 144.

December 15, 1972 - Chairman Casey expressed concern that "purchase contract" would delay completion to 1976 and mentioned 400 North Capitol Street.

January 2, 1973 - SEC Executive Director C. King Mallory wrote GSA Administrator Sampson formally outlining space requirements.

January 15, 1973 - Chairman Casey wrote OMB Director Ash regarding building needs and mentioned 400 North Capitol Street.

January 15, 1973 - Mr. Sampson wrote Chairman Casey indicating (1) submittal of prospectus to OMB, (2) inability to lease unless this option can be provided without increased cost to government.

February 5, 1973 - Mr. Mallory requested GSA consider "lease/purchase" as well as purchase contract and suggested amended prospectus language.

March 15, 1973 - GSA sent letter rejecting lease/purchase option in favor of purchase contract, giving no explanation of decision.

June 13, 1973 - SEC presented detailed explanation to OMB of deficiences of old prospectus (based on which OMB sent prospectus back to GSA for revision).

September 6, 1973 - SEC Executive Director Alan F. Blanchard visits Hazen D. Harvell, Assistant Commissioner for Operating Programs of Public Buildings Service and Loy M. Ship, Jr., Assistant Commissioner for Space Management. GSA promises to consider prospectus allowing lease, but cites resistance by House Public Works Committee. GSA further stated they thought they could get a prospectus to OMB by mid-November.

October, 1973 - OMB requests GSA to develop new propsectus for meeting SEC space requirements.

November 7, 1973 - GSA indicates interest in retaining SEC at present location, while securing incremental space nearby.

December, 1973 - GSA assigned to SEC an additional 52,291 net square feet (including parking) at 1100 L Street, N.W.

Week of March 4, 1974 - In response to SEC inquiry, GSA indicates that it will send prospectus (already four months late) to OMB by March 15.

March 7-11, 1974 - Chairman Garrett outlines space problems to Chairman Blatnik of House Public Works Committee.

March 11, 1974 - Chairman Blatnik calls GSA Administrator and Public Building Services Commissioner to express concern about meeting SEC's urgent space needs. GSA indicates prospectus will be delivered to OMB by March 15.

March 25, 1974 - SEC submits new space request form at request of GSA.

May, 1974 - GSA assigned to SEC 1,025 additional square feet (including parking) at 1100 L Street, N.W.

June 11, 1974 - GSA notifies SEC of transmittal of draft prospectus to OMB.

June 14, 1974 - OMB Associate Director Scott signs letter indicating "OMB has no objection of transmittal of prospectus to Congress." Note: OMB expedited consideration and approved prospectus at SEC's request.

June 25, 1974 - SEC Director of Administrative Services, Richard Kanyan learns prospectus has not been transmitted to Congress. GSA indicates propsectus could be at GSA three or four more weeks.

July 8, 1974 - SEC Executive Director Blanchard calls Mr. Harvell at GSA -- call not returned.

July 10, 1974 - Mr. Harvell returns call and indicates that prospectus should be at House and Senate Committees by July 17.

August 6, 1974 - Prospectus transmitted to Committees on Public Works.

August 7, 1974 - SEC staff meets with developer of 400 North Capitol Street, at GSA, to discuss mutual interest.

August 16, 1974 - Chairman Garrett writes Congressional committees asking increase in space above that described in prospectus.

October 10, 1974 - Both Committees approve GSA prospectus with changes requested by SEC.

October 29, 1974 - GSA requests itemization of problems and expenses which would occur if SEC were maintained in two locations.

November, 1974 - SEC receives "Solicitation" and believes it is inadequate.

November 6, 1974 - SEC Director of Administrative Services writes to GSA, detailing problems of split operations.

November 14, 1974 - GSA Space Acquisition Schedule calls for issuing Solicitation for Offers on November 29, making award on January 4, 1975, and having alterations completed by June 30, 1975.

December, 1974 - SEC letter to GSA stating inadequacy of "Soliciation." GSA warns SEC that to delay signing the solicitation would not be in SEC's best interests. Since the solicitation is already delayed, GSA urges SEC to sign and promises to deal with our objections later.

- A few days later, the Commission, accepting GSA's pledge to handle our objections, approved the solicitation.

January 27, 1975 - Acting Regional Administrator John Galuardi writes Chairman Garrett, indicating that only one offer was received in response to GSA's solicitation for space (for the SEC) and since that offer was exorbitant, GSA had decided unilaterally to postpone delivery of an SEC building for one year.

January 31, 1975 - GSA Amends Solicitation for Offers No. 697 to extend delivery of new building to July, 1976. Amended offers will be received through February 17, 1975.

February 6, 1975 - Chairman Garrett writes to GSA Administrator Sampson requesting a meeting to discuss grave concern on GSA decision to delay new building acquisition for one year. Letter was followed by several Commission-initiated requests to arrange a meeting with Administrator Sampson. All failed.

- GSA wrote saying a deputy of the Administrator would meet with Chairman Garrett. SEC persisted in trying to meet with Administrator Sampson.

February 27, 1975 (received March 4) - GSA Administrator Sampson replies that initial responses to solicitation for offers were unsatisfactory, and that the Government would save more than a million dollars annually by extending delivery of new building.

Week of March 10, 1975 - Chairman attempts to reach GSA Administrator by phone.

March, 1975	- Chairman Garrett wrote to GSA Administrator, designating Commissioner Pollack to represent him at any meeting. - Later that month, Commissioner Pollack met with Administrator's deputy.
April 1, 1975	- GSA requests offerors to extend offers through April 28, 1975.
April 2, 1975	- GSA Administrator Sampson writes to Chairman Garrett stating that negotiation for unspecified building will be concluded by April 4, and, based on SEC approval, award will be made after April 10.
April 28, 1975	- GSA requests offerors to extend their offers through May 28, 1975.
May, 1975	- GSA Administrator Sampson calls SEC Chairman Garrett to tell him about Buzzards Point, which Chairman Garrett says is unacceptable.
May 28, 1975	- GSA requests offerors to extend their offers through June 6, 1975.
June 3, 1975	- GSA Administrator's deputy calls to see Chairman Garrett immediately. They meet hours later and the deputy tells Garrett that GSA has made an award to the owner of Buzzard's Point. Garrett says the Commission will probably exercise its right to request a review of the decision. - GSA Administrator Sampson confirms by letter to Chairman Garrett that GSA has awarded contract to construct a building for SEC at Buzzard's Point.
June 5, 1975	- SEC Chairman Garrett notifies GSA Administrator Sampson that the SEC does not concur with GSA's desire to locate Commission at Buzzard's Point, and will "pursue all remedies available to us."
June 10, 1975	- SEC Chairman Garrett notifies OMB Director Lynn of intent to appeal GSA decision to President through OMB Director, according to Executive Order 11512 procedures.
June 11, 1975	- SEC Executive Director Blanchard requests information regarding GSA decision from Regional Administrator Galuardi.
June 20, 1975	- GSA Regional Administrator Galuardi supplies information requested by SEC Executive Director Blanchard.
July 18, 1975	- SEC submits formal Request for Reversal of the GSA Decision to Relocate the SEC to Buzzard's Point.
January 3, 1976	- OMB Director Lynn notifies Chairman Hills by letter that OMB "concluded that the SEC should not be assigned to the space at Buzzard's Point. - OMB suggested to GSA that they meet with the SEC promptly to explore what steps need to be taken to resolve SEC's space requirements.
November, 1976	- SEC Executive Director Peter Shipman writes GSA summarizing need for additional 30,000 square fee of office space.

March 1, 1977 - Excerpts from testimony of SEC Chairman Roderick M. Hills before the Subcommittee of the House Committee on Appropriations

May, 1977 - SEC Chairman Harold Williams and Executive Director Benjamin Milk meet with GSA Administrator Jay Solomon and Associate Administrator Robert T. Griffin to outline severity of space needs.

June 2, 1977 - SEC Executive Director Milk writes to GSA Associate Administrator Griffin transmitting an analysis of SEC headquarters space calculations, together with a comparison of SEC and other regulatory agencies.

September, 1977 - GSA assigns to SEC 30,000 square feet at 320 First Street, N.W.

January, 1978 - SEC moves half of the Division of Corporation Finance into First Street - third headquarters satellite facility.

April 26, 1979 - SEC Chairman Williams and Executive Director Milk meet with GSA Regional Administrator at which time GSA requests SEC prepare a request for consolidated headquarters space.

September 4, 1979 - SEC Chairman Williams submits formal request for consolidated headquarters space to GSA Regional Administrator Kallaur.

November 5, 1979 - GSA responds that they are developing a 1,000,000 square foot prospectus for three agencies and that the Commission is one of the three. However, GSA reserves the right to acquire the space in 200,000 square foot parcels, which would be inappropriate for the Commission's 320,000 square foot consolidated space needs.

December 10, 1979 - GSA Regional Administrator Kallaur writes to SEC Chairman Williams including draft prospectus for 1,000,000 square feet building.

January 9, 1980 - SEC Chairman Williams writes to GSA Regional Administrator Kallaur with comments on the draft prospectus including such concerns that (1) 1983 is too late and (2) 200,000 square foot parcels are inappropriate. Requested response by January 31.

January 31, 1980 - Telephone conversation with staff member at GSA in which Commission is advised all our concerns will be addressed.

(received February 5) - GSA Regional Administrator Kallaur responds to SEC Chairman Williams concerns regarding SEC consolidated headquarters.

February 14, 1980 - SEC Executive Director and staff met with Warren Kane, Staff Director of our Appropriations Subcommittee to discuss SEC's obtaining direct leasing authority. At this meeting Mr. Kane stated "We don't want you moving out to the suburbs."

February 28, 1980 - Statement of SEC Chairman Williams before the Senate Subcommittee of the Committee on Appropriations amongst other things, requests independent leasing authority.

- Excerpts from Senate hearings:

Mr. Kane. ". . . You know, we have had a proliferation of buildings west of 14th Street in Washington. Have you given any thought to this building being somewhere east of 14th Street and being part of the revitilization of Pennsylvania Avenue, the Convention Center, and those kinds of things that the city is trying to do in the old downtown area east of 14th Street?"

March 20, 1980 - Statement of SEC Chairman Harold M. Williams before the Subcommittee on Consumer Protection and Finance, House Committee on Interstate and Foreign Commerce stressing critical need for a consolidated headquarters.

April 24, 1980 - Letter to Congress from John E. McGovern, Jr., Chairman, Securities Law Committee of the Chicago Bar Association, supporting SEC consolidated headquarters.

May 14, 1980 - H.R. 6830, 1981 authorizing legislation reported out of Committee, containing authorization for SEC to lease space (Report No. 98-961).

May 28, 1980 - Chairman Johnson, House Committee on Public Works and Transportation, writes to Speaker O'Neill, requesting hold on H.R. 6830 pending resolution of leasing authority issue.

June 2, 1980 - SEC Chairman Williams writes the Honorable Elliott H. Levitas, Chairman, Subcommittee on Public Buildings and Grounds of the House Committee on Public Works and Transportation seeking advice and assistance with regard to the SEC's pressing need for a consolidated headquarters.

June 5, 1980 - Chairman Staggers, Interstate and Foreign Commerce Committee, and Chairman Scheuer, Subcommittee on Consumer Protection and Finance, write to Chairman Johnson, Committee on Public Works and Transportation, explaining need for new SEC headquarters facility.

June 16, 1980 - Chairman Johnson, Public Works and Transportation, and Chairman Levitas, Subcommittee on Public Buildings and Grounds, write to GSA Administrator Freeman asking for immediate update of SEC prospectus.

July 28, 1980 - GSA issues SEC lease prospectus.

July 31, 1980 - Statement of Commissioner Philip A. Loomis, Jr., before the House Committee on Public Works and Transportation.

- House Subcommittee on Building and Grounds approves SEC prospectus.

August 13, 1980 - GSA requested detail SEC space requirements.

- SEC provided GSA the detailed space requirements for consolidation.

August 15, 1980 - Senator Moynihan writes to Senator Sarbanes expressing support for Commission efforts to obtain new headquarters area.

August 18, 1980 - GSA advertises for realtors to "list space."

August 26, 1980 - House Public Works Committee (full Committee) approved $6.4 million annual lease prospectus.

September 16, 1980 - FY 81 appropriation language for rental of space in D.C. included by Senate State, Justice, Commerce, Judiciary and Related Agency Appropriations Subcommittee, and approved in full committee.

- GSA furnished SEC draft solicitation.

September 17, 1980 - SEC commented to GSA on draft solicitation.

September 18, 1980 - GSA updated solicitation to incorporate SEC needs.

September 19, 1980 - SEC approved solicitation with the understanding that delivery date would be a critical award factor.

- GSA issued solicitation; response to remain open to December 12, 1980; occupancy by March 1, 1982.

October 10, 1980 - Solicitation response period closed.

October 14, 1980 - GSA notified SEC Executive Director Milk that nine responses were received to the GSA space solicitation made on behalf of the Commission.

November 4, 1980 - SEC Executive Director Milk forwards letter of concern to Loretta Brooks, Space Management Division, GSA.

December 4, 1980 - GSA issued Amendment No. 1 to solicitation's responses to remain open to March 1, 1981; occupancy by March 1, 1982.

February 27, 1981 - GSA requested further extension of responses because White House had not yet responded to GSA's request on whether to proceed with solicitation in view of Administration's proposed budget cuts; responses to remain open to April 15, 1981.

March 10, 1981 - Capitol Mall North Associates letter to GSA stating they want possession of Capitol Mall North (main SEC headquarters building).

March, 1981 - Staff reduction of 70 positions at headquarters lowered consolidation needs to 300,000 square feet.

April 16, 1981 - GSA requested "best and finals" by April 17, 1981 -- to remain open to May 15, 1981; occupancy June 1982.

April 21, 1981 - Chairman Weicker, State, Justice, Commerce, the Judiciary and Related Agencies Subcommittee letter to OMB indicating special interest in a new SEC consolidated headquarters building.

May 11, 1981 - OMB Director Stockman letter to Chairman Weicker supporting the consolidation of SEC.

May 12, 1981 - House Committee on Appropriations directs an investigation of the solicitation of space for a consolidated headquarters building in Washington, D. C. for the SEC.

May 15, 1981 - GSA notified SEC Executive Director of decision to make award with occupancy in June, 1982. SEC informally accepts.

June 26, 1981 - GSA formally offered contiguous office type and support space in a new SEC consolidated headquarters building in Washington, D. C.

July 1, 1981 - SEC formally accepts consolidated space as offered.

July 1, 1981 - Report of House Appropriations Subcommittee Investigative Unit delivered to Subcommittee.

PROMOTING PUBLIC CONFIDENCE IN SECURITIES MARKETS

Mr. LOOMIS. I will go through part of it.

Mr. Chairman and members of the subcommittee, I am pleased to have the opportunity to appear with you today to discuss the requirements of the Securities and Exchange Commission. I am here, as you mentioned, as Acting Chairman. Two other commissioners are here, as well as many of the senior people.

At the outset, I would like to express our collective support of the goal of a national economic revitalization. We believe we have a role to play in this process. Indeed, a fundamental objective of the Congress in enacting Federal securities laws and creating the Commission was to promote public confidence in the securities markets in order to foster the vital process of capital formation. At the same time, we appreciate and support The President's efforts to slow down growth in the Federal budget, and we recognize that the cuts in the Commission's activity level proposed by President Reagan may be thought necessary to achieve these greater objectives. With that background I will turn to the revised budget estimates that are before you today.

They are the product of almost 6 months of discussions between our staff and that of the Office of Management and Budget. As you know, initial requests were due at OMB in September of 1980. The justification materials explaining that budget have been submitted to the subcommittee and are in its possession.

Subsequent to the submission of these comments, OMB took another look at the 1982 budget as a part of President Reagan's overall effort to decrease Federal expenditures. In terms of raw numbers, the difference between the two budgets for the Commission represents a reduction of 159 positions and $5,724,000 in fiscal year 1982. In addition, the Commission identified a savings of $530,000 in nonpersonnel costs in 1981 which will be applied to help offset the supplemental appropriation for pay, now pending before the subcommittee.

The specific impact of this budget allocated by program area is addressed in our "Revisions to Budget Estimate, Fiscal 1982," which you also have. It should be noted that President Reagan did not designate particular program levels at the Commission.

REALLOCATION OF RESOURCES

Therefore, I think it would be appropriate to briefly describe how we intend to reallocate our resources. Our initial plan, basically, is to decrease staffing levels, more or less evenly, throughout the operating divisions and offices. Of course, it is impossible to state with certainty what problems may arise in fiscal year 1982. Before and during that year we will reassess our resource requirements and, after informing the subcommittee, reallocate our resources where they are needed most.

Currently, we are not targeting any particular programs for elimination. Instead, we ask that each of our divisions and offices continue their current programs, although we recognize that our effectiveness in all areas will be reduced to the extent that our presence in those areas is reduced.

For example, the Division of Corporation Finance, which is responsible for our disclosure program, has not been able to do all that we would like to do, or all that the business community would like to have us do, in the way of reviewing and commenting on filed documents. In an effort to reconcile our dwindling resource base with the growing number of filings, we recently reorganized that division, instituted quality control techniques and incorporated current computer technology into its processes. Still, we have had to switch to an audit mode of review in order to have sufficient personnel to scrutinize the key filings. We do not even look at the great majority of routine documents.

It is important, particularly in an economy that is fluctuating, to enable securities offerings to market quickly once a company decides to make the offer. That, in turn, requires prompt review by staff. Yet, under the new proposed budget, the staff of the Division of Corporation Finance will be 5 percent smaller in 1982 than it was previously. This cannot help but have an effect on the way and the effectiveness with which the division performs its functions.

Second, in our program to prevent and suppress fraud, the reduction of the Division of Enforcement will be from 201 positions proposed in the previously submitted budget to 185 positions in the budget before you today. This does not mean that our enforcement activities, such as insider trading, will come to an end. However, we will have less ability to investigate and prosecute than we would have if the current staffing levels were maintained.

Similarly, the Division of Market Regulations has been reduced by 12 people. This delays its servicing and cooperating with the self-regulatory organizations.

LEGISLATIVE IMPACTS

In order to appreciate the significance of these examples, it must be noted that the size of the Commission's staff today is smaller than it was in 1975. This is so despite the fact that since that time the Congress has substantially increased our responsibilities.

For example, last fall the Congress enacted the Small Business Investment Incentive Act of 1980 which places significant new responsibilities upon the Commission. As the chairman may recall, then Chairman Harold Williams appeared before you 1 year ago and indicated the Commission's view that the Commission's resource levels at that time were inadequate to fully and successfully carry out the Commission's statutory mandate. It would be disingenuous for me to tell you today that these concerns are no longer justified. I must point out that if the Commission suffers further significant reductions, the Commission will not be in a position to carry out its mission in an acceptable manner.

Like the family or business which faces the prospect of inadequate financial resources, belt tightening, postponing the accomplishment of objectives, and economizing and similar efforts can only sustain the Commission for so long. At some point, inadequate resources for the Commission may impair its functions, including the capital formation process on which the Nation's hopes so crucially depend.

The members and staff of the Commission believe that the responsibilities with which Congress has charged us are important. We are hopeful that with the limited resources allocated to the Commission, we will continue to be able to carry out our key programs at an acceptable level. Any decrease from the current level of resources necessarily is viewed by us as reducing our ability to discharge our responsibilities properly.

We also recognize, however, that the cuts in the Commission's appropriations proposed by President Reagan seem justified at this time to achieve the broader objective of revitalizing the Nation's economy. In that spirit, we are prepared to contribute our most creative efforts in order to maximize the benefits derived from those resources which are appropriated to us.

Mr. Chairman, that completes my prepared statement. I want to add one thing, however. This budget was formulated primarily by discussions between former Chairman Williams and the OMB in which I did not participate. Consequently, I may be more dependent than Chairman Williams was on asking the staff to provide information for us.

PREPARED STATEMENT SUMMARY

Senator WEICKER. Did you prepare this statement?

Mr. LOOMIS. No; I looked at it however. This statement?

Senator WEICKER. The statement you just read here.

Mr. LOOMIS. Sure, I prepared it.

Senator WEICKER. I want to compliment you on it. I think it is one of the few honest things I have heard before this committee. Obviously matters of concern are raised here. I think properly raised. I would agree. You say, "It does mean, however, that we will have less ability to investigate and prosecute that type of illegal activity and other alleged frauds than would be the case if current staffing levels were maintained. . . . It must be noted that the size of the Commission's staff today is smaller than it was in 1975. This is so despite the fact that since that time the Congress has substantially increased our responsibilities. . . . It would be disingenuous for me to tell you today that those concerns are no longer relevant or accurate. I must point out that if the Commission suffers further significant reductions the Commission will not be in the position to carry out its mission in an acceptable manner."

Then referring to the administration's hopes for economic revitalization and capital formation, et cetera, and the role that the Securities and Exchange Commission plays there, I will be honest with you, I have sat here and listened to a lot of statements. All they are is a mouthing of what has been handed to them by OMB. I think this is an excellent statement. It points out some of the difficulties that are involved in this across-the-board budget cutting routine which takes the good and the bad and lumps it all together. I want to compliment you on the statement. It is a good statement.

Mr. LOOMIS. Thank you.

Senator WEICKER. All my questions will be submitted for the record and for response to the record, but we will want to go into some of these in detail.

CONSOLIDATED HEADQUARTERS BUILDING

Your efforts to secure a consolidated headquarters building have been long and tedious. This proposal first surfaced 8 years ago, and I see that for the first time you have submitted a budget request for this purpose. Since the proposed $2.8 million is the only significant increase in your budget, it appears to have OMB's blessing. Last year we offered the Commission independent leasing authority, which was withdrawn only after GSA appeared to be making a conscientious procurement effort. What is the current status of your consolidation effort?

Mr. LOOMIS. I will pass that on. The GSA has been cooperative and we had hoped we would have a decision by this time, but that has not quite happened. I understand they are fairly close. Mr. Milk might want to add something.

Mr. MILK. Mr. Chairman, the General Services Administration has indicated to us their intent to make an award for a new consolidated headquarters building for the Commission a week from today, April 15. Our lease, I might add, expires on April 20 for the building we are located in now. The landlord has indicated his intent to take every legal action necessary to reclaim the building at 12:01 a.m. on April 21.

Senator WEICKER. You estimate a week from today you will have a response from GSA.

Mr. MILK. GSA has announced an intention to award at that time. I believe they have had some discussions with OMB with respect to the overall space acquisition policy of the Federal Government, and they may or may not be relying on some guidance from OMB. I do know they did make another award for a substantial amount of space, I believe, 2 weeks ago.

Mr. KUNDAHL. If that guidance is not forthcoming by next Wednesday, it is very conceivable we will get another delay. GSA originally told us they would make an award last December, I believe.

Senator WEICKER. So you are really at the mercy of GSA.

Mr. KUNDAHL. That is correct.

FOREIGN CORRUPT PRACTICES ACT

Senator WEICKER. Last year the Commission stated that the accounting provisions of the Foreign Corrupt Practices Act were being used as a vital supplemental tool to prevent violations of the securities laws. In January 1981, the Commission announced its policies for enforcing this act. Would you care to summarize the key findings of that policy?

Mr. LOOMIS. The Commission's views on the proper interpretation of the act have evolved as the Commission gained experience and familiarity with the actual impact of the act on business practices. Much of the January statement emphasized business judgment in making cost benefits and determinations. These reflect long-standing Commission views. This does not represent any reversal of prior Commission policies. In other words, we are learning about this as we go along, hoping to make improvements. We have had a number of cases in which, at least in most, most of what we find are not only violations of the accounting provisions but violations of something else as well.

REDUCTION OF PERSONNEL

Senator WEICKER. Let's talk for a minute about the reduction of personnel. As I read the papers, I don't see any great diminishing of activity in the whole area of securities and stocks, new issues, and what have you. If there is anything, I would say there is a heating up of interest.

Mr. LOOMIS. Recently I think that is so.

Senator WEICKER. How does that equate with the personnel reduction?

Mr. LOOMIS. It does mean particularly Corporation Finance, to a degree enforcement has more to do and less people to do it with; and that is not a very good situation. We believe, as I said in the statement, that we can operate in a satisfactory way for a while, but in the long run I think we will need to have more positions unless things quiet down.

Senator WEICKER. Where is my old friend Mr. Sporkin? Is he no longer with you?

Mr. LOOMIS. He is with us. He had some other reasons which he told me were urgent. Without explaining exactly what they were, he told me he couldn't come. He sent Dave Doherty.

Senator WEICKER. Where is Mr. Doherty?

Mr. DOHERTY. Here, Senator. In terms of the impact on enforcement, I would just say that really the universe we are dealing with is significantly larger than it was in the past—more broker/dealers registered, more financial advisers, trading volumes up, more new issues on the market. We have somewhat of a backlog now. We are trying to deal with the cases we now have in progress. I suppose any reduction of staff is going to make us a little less able to deal with what we have. The backlog may increase some. I suppose our response time would be increased. We would be in a position of seeking to settle cases that we might not otherwise settle.

Perhaps most importantly, our ability to react to the new kind of problems, the new frauds, the latest game in town, would be somewhat reduced because we would be attempting to deal with what we already have. I think that is the principal significance on enforcement of a reduction in staff.

PERSONNEL PRIORITIES

Senator WEICKER. If you had to indicate where you feel the greatest priorities are in terms of personnel to boost up the totals that you presented to us in your budget, how would your priorities sit on this matter with the various functions of the agency?

Mr. LOOMIS. That is difficult. I will again call on staff. Our three main functions, which I described in my statement, are all important and, to some degree, support each other. So that what we have done is try to, as I said, spread it out rather than single it out. I think that is wise. I think we will have to review this matter and see if we want to change our priorities, but I personally would not wish to make any major changes. My capacity is that of Acting Chairman. I think our new Chairman, Mr. Shad, would have to do that. So I don't look for any immediate redistribution of resources.

Mr. KUNDAHL. In the initial budget, which President Carter submitted, we had some additional staff allocated to review new filings, particularly in the small business area. We had additional staff assigned to the surveillance system. As Commissioner Loomis indicated, these increases reflected Chairman Williams' priorities, quite naturally new Chairman Shad might have a different view.

Senator WEICKER. When is Mr. Shad expected to be confirmed?

Mr. LOOMIS. In my conversations with him yesterday, he said he probably will not be sworn in until the end of April.

Senator WEICKER. I am going to let this matter hang. I think you have expressed concerns in your statement. Obviously the situation is such even a layman like myself asks perfectly normal questions like how do you bring together this dichotomy, if you will, this contradiction vis-a-vis the tasks assigned to you by law, the circumstances in the market and the reduction of the budget. The law specifically mandates it has to be done. If somebody wants to abolish the law, that is one thing.

I might add, in terms of philosophy, you correctly pointed out it seems this would be in keeping with that of the present administration.

ADDITIONAL COMMITTEE QUESTIONS

The rest of my questions will be submitted for response for the record. I think you can carry the word back to the chairman that probably—I will be sitting through this month and the beginning of next month—and I may want him to reappear before this subcommittee.

I would just as soon have the input come from the agency.

Mr. LOOMIS. You mean reallocation of resources?

Senator WEICKER. As you have indicated, I think as Chairman he should indicate where his priorities are. I think he should have that opportunity. Otherwise, I will do it. Thank you very much.

[The following questions were not asked at the hearing but were submitted to the Commission for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WEICKER

NEW BUILDING

Your efforts to secure a consolidated headquarters building have been long and tedious. This proposal first surfaced eight years ago and I see that for the first time you have submitted a budget request for this purpose. Since the proposed $2.8 million is the only significant increase in your budget, it appears that you now have OMB's blessing. Last year we offered the Commission independent leasing authority which was withdrawn only after GSA appeared to be making a conscientious procurement effort.

Q. What is the current status of your consolidation effort?

A. At the time of our hearing, GSA had indicated that an award for a new SEC headquarters building was scheduled for April 15. Later that same day GSA notified the Commission that the date targeted for awarding a contract had been slipped back to May 15. This was the third or fourth time that GSA postponed making an award. It was not clear whether the delay was attributable to procedural difficulties or to lack of guidance from OMB.

Independent Authority to Move

Q. If the Committee were to again grant independent leasing authority, how would the Commission proceed?

A. Obviously, the ideal situation would be for GSA to satisfactorily consummate the existing acquisition so as to negate the need for independent leasing authority. If that does not occur and the Committee were to again grant leasing authority to the Commission, we would assemble a team of four or five staff members (including attorneys, financial analysts, management analysts and contract specialists), familiarize ourselves with both Federal and private sector property acquisition procedures, analyze alternative space acquisition methodologies and the cost/benefit impact of each and advertise our requirements. We would also want to explore the feasbility of retaining GSA to serve as consultants to the Commission; this would enable our agency to draw on the considerable GSA expertise without being held hostage by internal operational problems at GSA.

Q. When do you anticipate you could be moved into a new location?

A. Assuming GSA did not acquire a building on the basis of the Commission's approved and outstanding lease prospectus, the time of an SEC move to a new location would depend upon when the Commission received its own leasing authority. If the Commission had leasing authority today, a move could be consummated within fifteen to eigteen months; if authority were not forthcoming for another six months, a move might be as much as two or three years away.

Q. Please submit for the record an update on your discussions with GSA concerning the move and the actions that GSA has taken on your behalf.

A. Commission staff members have been in touch with GSA regional personnel regularly during the past ten months. The original solicitation contemplated an award in December 1980, with occupancy by March 1, 1982. Subsequent amendments contemplated a March 1981 award, with occupancy in March of 1982, and an April 15, 1981 award with occupancy in June of 1982. As indicated earlier, GSA has since informed the Commission that the date of award has been delayed for another month.

At one point during the course of our discussions, GSA agreed to review and take into account the Commission's ranking of award factors. Upon reconsideration, however, GSA concluded that this might somehow jeopardize an objective selection, and the Commission's factors were never communicated by GSA to their acquisition personnel. At another point, GSA agreed to inform the Commission of all offers considered responsive to the solicitation. Subsequently, however, GSA determined that this, too, could jeopardize the integrity of the selection process. Despite the missed deadlines and the exclusion of the Commission from meaningful participation, GSA maintains that an award will be forthcoming and that the selection will be one which both meets the needs of and pleases the Commission.

FOREIGN CORRUPT PRACTICES ACT

New Enforcement Policy

Q. Last year, the Commission stated that the accounting provisions of the Foreign Corrupt Practices Act were being used as a vital supplemental tool to prevent violations of the securities laws. In January 1981, the Commission announced its policies for enforcing this act. Would you please summarize the key findings of this policy?

A. The Commission's policy can be summarized as follows:

1. Recordkeeping and Degree of Exactitude. The accounting provisions of the Foreign Corrupt Practices Act require that a company maintain records that reasonably and fairly reflect transactions and dispositions of assets, but do not mandate a standard of absolute exactitude. The recordkeeping requirement is an integral part of the Congressional purpose of assuring that transactions and dispositions are recorded in such a way as to maintain adequate control over them. While a materiality limitation is inconsistent with the Act's language and intent, a standard of "reasonableness" -- the touchstone of which is the judgment of company management, under circumstances varying from issuer to issuer -- modifies both the recordkeeping and internal controls requirements. In essence, therefore, the Act does provide for a de minimus exemption, though not in adsolute, quantitative terms. It is essential that books and records be maintained with sufficient accuracy to permit appropriate reflection of transactions and dispositions of assets; effective

administration of the internal controls system; preparation of financial statements in accordance with generally accepted accounting principles; and proper auditing. On the other hand, records that are not related to internal or external audits or to the four internal control objectives set forth in the Act are not within the purview of the recordkeeping requirement.

2. Deference. With respect to issuer liability for recordkeeping violations, the Commission will look to the adequacy of the internal controls system, the involvement of top management in the violation, and the corrective actions taken once the violation was uncovered. If a violation was committed by a low level employee, without the knowledge of top management, with an adequate system of internal controls, and with appropriate corrective action taken by the issuer, no action against the issuer would be called for. In terms of the controls system itself, the Act does not mandate any particular type of system, and considerable deference should be afforded reasonable business judgments by the issuer. One measure of reasonableness relates to whether the expected benefits from improving the system would be significantly greater than the anticipated costs, given the various management objectives and needs of the particular company. The key to an adequate control environment is in approach on the part of the issuer's board of directors and top management which makes clear what is expected, and that conformity to these expectations will be rewarded while breaches will be punished.

3. State of Mind. Nothing in the statutory purpose of the Act requires that inadvertent inaccuracies be treated as recordkeeping violations. The Act's principal purpose is to reach knowing or reckless misconduct, or failure to correct known falsifications (or falsifications that should have been known) by a person who is responsible for the records or controls or who otherwise supervises the activity giving rise to the violation. Similarly, the creation or maintenance of any fund that is designed to be used for off-books payments outside the issuer's system of internal accounting control, or obstructing or circumventing such system in any significant respect by misstatement to auditors or other related means is prohibited. The Act's provisions, however, do not require the issuer or its top management to be the guarantors of all conduct of company employees. The focus as to issuer liability, as noted above, is on the knowledge fo top management, the adequacy of its system of controls, and corrective action taken upon discovery. Barring the participation or complicity of senior company officials, when discovery and correction expeditiously follow, no failing in the company's internal accounting system would exist as a result of an isolated breach.

4. Subsidiaries. When the issuer controls more than 50% of the voting securities of the subsidiary, compliance by the subsidiaires with the accounting provisions is expected. The same expectation is present where there is between 20% and 50% ownership, subject to a deomonstration by the

issuer that this does not amount to control. If there is less than 20% ownership, the Commission bears the burden of demonstrating control.

5. Enforcement Policy. These views reflect Commission policy and practice in implementing and enforcing the accounting provisions and are consistent with the cases brought by the Commission since adoption of the Act. The Commission seeks to interpret the Act's provisions with prudence and common sense, placing greatest emphasis on encouraging an environment in which the private sector can meet its responsibilities in comlying with the Act meaningfully and creatively.. .

Enough Resources to Carry Out Enforcement

Q. Do you believe that you have sufficient resources in your fiscal year 1982 budget to carry out the requirements of the Foreign Corrupt Practices Act?

A. At the present time we are enforcing this Act on an exception basis. If indications of violations of the Act come to our attention we will conduct an appropriate investigation to determine if there appear to be actionable violations. Since this is a new Act, it is necessary for those subject to it to have an adequate opportunity to become familiar with its requirements and develop suitable procedures to comply with them. We believe that our present budget is adequate to permit us to proceed on this basis.

GAO RECOMMENDS ELIMINATING CRIMINAL PENALTIIES (FCPA)

A March 1981 General Accounting Office report said that the SEC's January 1981 policy statement for enforcing the Foreign Corrupt Practices Act was significant but did not go far enough and has recommended elimination of criminal penalties for violations of the accounting provisions.

Q. Does the Commission plan to issue additional guidance to the business community on how to comply with the accounting provisions?

A. The Commission has, in its releases regarding management reporting under the Act and in its January statement, provided a substantial amount of guidance to the business community, and is awaiting reaction to these initiatives from affected interests. The Commission is also studying the recently issued GAO report with a view to determining whether any additional steps would be appropriate as a means of providing guidance.

Q. What is the Commission's position on GAO's decriminalization recommendation?

A. The Commission is studying the decriminalization recommendation but has not yet formulated a position on it.

Q. Please provide for the record the number of Commission investigations where the accounting provisions resulted in a criminal referral.

A. None.

SMALL BUSINESS INVESTMENT INCENTIVE ACT

Conferences:

Q. Last year this Subcommittee provided $750,000 for the implementation of two small business conferences required by the Small Business Investment Incentive Act -- one on small business capital formation and one to consider federal and state interfaces. This amendment was removed in conference. Do you have sufficient resources in your current estimate before this Committee to carry out these activities?

A. The total expenditures for the two conferences, which was estimated to run between $750,000 and $1,000,000 would cover four to five additional professional and clerical staff salaries, transportation costs for both speakers and staff, costs of meeting rooms at hotels, meals, mailing and publicity, printing of interim and final reports, and costs for private studies. However, our current budget estimate does not cover this expenditure, and our present staff level and funding is insufficient to carry out these mandated functions.

Q. What is the number of attendees planned and the location of the conferences?

A. It was anticipated that with the original budget request for $750,000 at least three regional meetings in various parts of the country and one national meeting could be held for the "government-business" forum. This approach was considered in an effort to reduce the time and costs of traveling to a meeting by small business men while encouraging their participation. The staff, however, is unable at this time to determine the number of expected participants. With respect to the "state-federal securities conference" the staff expects that it could coordinate its efforts to develop the conference with the North American Securities Administrator Association, an organization of state administrators. Participation in this conference is not expected to exceed 200 people. Thus, it is expected that this conference will require a smaller budget.

Q. Has the SEC discussed holding a joint conference with the SBA or having the SBA hold these conferences in lieu of the SEC?

A. Because Sections 304 and 306 direct the Commission to conduct a "government-business forum" and an annual meeting with state securities commissioners, the staff has not discussed the feasibility of a joint conference with the SBA. The staff has, however, been in contact with the SBA for their input on such matters as projected costs, format, and participation by smaller businesses. It is also anticipated that the Commission will work closely with the SBA in preparing an agenda for the "government-business" forum.

NEW CHAIRMAN

Q. When might we see a permanent Chairman for the Commission? How far along are we in the confirmation process?

A. On April 8, 1981, by voice vote, the Senate approved the nomination of John Shad to serve as a Commissioner for the remainder of the term expiring June 5, 1982, and for the term of five years expiring June 5, 1986.

SMALL BUSINESS: CAPITAL FORMATION

Small Business Investment Incentive Act:

Q. In your justification you indicate that the level of funding for the Full Disclosure activities will substantially delay the development of special programs and rulemaking designed to assist small business capital formation. Doesn't this impact run contrary to the President's intention to promote business expansion and development? Supply for the record the amount of money that your people think you need to promote the business expansion and investment that was originally suggested. How many people would it take to administer the Small Business Investment Act? We got an estimate from CBO that five positions are the maximum number you would need (for this act) and that it would have a very insignificant impact on the agency. Are five positions so significant out of a staff of 2,000 that you have to make a big deal out of this new major responsibility? Don't you think you can find people to administer this act without cutting it back or talking about limiting access?

A. As indicated in the Commission's Revised Budget Estimate for fiscal year 1982, the Division would be required to reduce its regional office staff by two staff years and its current Office of Small Business Policy staff level by an additional two staff years. The Commission believes that the regional processing review of both Form S-18 and Regulation A filings, along with various small business rulemaking initiatives have been successful vehicles for facilitating capital formation for small and growing businesses. If, however, budget constraints are imposed, the Division of Corporation Finance's operating staff must be conserved in order to assure adequate service to all companies that are bringing issues to the capital markets.

If the Division could be restored to its original staffing levels, the staff could proceed to develop and implement innovative rules which have already been scheduled that are designed to facilitate the timely and orderly entry of small business in the capital markets while at the same time preserving the full disclosure program. To put our allocated resources at the originally scheduled level would cost approximately $120,000.

The Commission has also indicated that total expenditures for the two conferences that are mandated by Title V of the Small Business Investment Incentive Act are estimated to run between

$750,000 and $1,000,000. This estimate would cover four to five additional professional and clerical staff salaries, transportation costs, costs of meeting rooms at hotels, meals, mailing and publicity, printing of interim and final reports, and costs for private studies. This estimate does not cover any other provisions of the Small Business Investment Incentive Act. These two conferences would be planned and implemented through the Commission's Office of Small Business Policy. Currently, there are seven full-time professionals assigned to the office. The office acts as a focal point for small business matters within the division, contributing to the understanding of the impact on small business by rule proposals and interpretations within and without the division. Also, the office coordinates with Congressional committees, government agencies, and other groups concerned with the problems of small business. Although the existing staff level of the office could perform the responsibilities of conducting both conferences, it would be required to suspend all of its rulemaking projects such as the continuing review of the exemptive provisions under the 1933 Act as well as its regional review process, until such time as staff resources permit. The Commission's other statutory responsibilities including the regulation of the securities markets, the regulation of investment companies and investment advisers, and the enforcement of the federal securities laws, are handled by the other divisions which are not equipped to assume the responsibilities of the Office of Small Business Policy. Therefore, the significance of five additional professional and clerical staff positions to carry out the statutory mandate to conduct the conferences must be viewed in the context of the office that is most equipped to perform this function.

SMALL BUSINESS: GENERAL

Q. How have you made it easier for small business to obtain capital?

A. During fiscal year 1979, the Commission established the Office of Small Business Policy in the Division of Corporation Finance. The office: a) serves as the focal point of the Commission's small business rulemaking initiatives; b) reviews and comments upon the impact of rule proposals on small businesses; and c) acts as liaison with Congressional committees, government agencies, and other groups concerned with small business.

As one of its first major rulemaking initiatives, the Commission adopted Form S-18 and related amendments concerning simplified registration and reporting requirements for small issuers. The form is available to certain domestic and Canadian corporate issuers who are not subject to the Commission's continuous reporting requirements for the registration of securities to be sold for cash not exceeding an aggregate offering price of $5 million of which up to $1.5 million may be sales by existing security holders. The form calls for narrative and financial disclosure which is less extensive than that required by any of the otherwise available registration forms.

The substantial reliance on Form S-18 during its relative brief history is evidence of its value to small business. During the first 18 months of the form's availablity (April 1979-September 1980), 149 Form S-18's were filed with the Commission, 111 of which became effective within that period for an aggregate value of $236,394,000.

During fiscal year 1980 the Commission adopted, pursuant to Section 3(b) of the Securities Act, Rule 242, which allows certain corporate issuers to offer and sell up to $2,000,000 of their securities in a six-month period to an unlimited number of "accredited investors" as defined in the Rule, and to 35 other purchasers. Accredited purchasers generally include regulated institutions or entities advised by such institutions, and persons who buy $100,000 or more of the issuer's securities sold in reliance on the rule and pay for them in cash or cash-equivalent. In addition to other conditions, issuers are required to furnish the information specified in Part I of Form S-18 if offers to sell or sales are made to purchasers who are "non-accredited." During theinitial six months of the rule, 64 issuers filed notices of sales pursuant to the rule for an aggregate intended sales of $38,058,704.

Regulation A provides an exemption from the registration requirements of the Securities Act for relatively small offerings of securities, provided certain requirements are satisfied. The Commission is in the process of revising and updating the requirements of Regulation A to make it a more practical means for small business to raise capital. Among the proposals now under consideration is a comprehensive revision and reformatting of the Regulation A disclosure provisions designed to codify disclosure standards which are currently being applied to issuers and to provide specific disclosure requirements for different types of issuers and different types of offerings. It is anticipated that these revisions will result in a cost savings to issuers by reducing the time spent in the review and comment process.

The Office of Small Business Policy is also currently engaged in a review of all of the exemptive provisions and the efficacy of such exemptions as they relate to capital formation needs of small business.

FULL DISCLOSURE

Q. There have recently been numerous articles on the Commission's effort with regard to integrated disclosure and rules that would reduce data firms must file with the SEC. Please describe those changes and the benefits or costs to investors and cost to registrants to comply with the new and the proposed disclosure requirements.

A. In September 1980, the Commission adopted several changes to its basic disclosure rules, principally a total revision of the Form 10-K for annual reports and adoption of uniform financial statement requirements, and also adopted a new short form for registration of securities issued in certain small business acquisitions. The Form 10-K and Form 10-Q changes eliminate numerous unnecessary disclosure requirements and allow (but do not require) use of information developed for dissemination to shareholders in satisfaction of Commission reporting requirements. The new financial statement rules simplify the Commission requirements, and conform them with existing standards of the accounting profession so that companies need only prepare one set of financial statements and information which is then used in reports to shareholders, reporting to the Commission, and registration of public offerings of securities. These new rules are effective for fiscal years ending on and after December 15, 1980, so that actual experience to date has been minimal. However, all of these changes have been praised widely in the private sector and are expected to provide major cost reduction to registrants by allowing information and documents prepared in one context to be used or relied upon in other contexts rather than reiterated in duplicative documents. Investors will benefit from integration of disclosure systems by receiving more readable and less overwhelming disclosure documents.

Further changes are underway. Action is expected in the next several months on proposals to eliminate various obsolete disclosure requirements for registration statements for public offerings of securities; the disclosure requirements for such filings will be simplified, and the requirements for public offerings will be consolidated and conformed with those applicable on a continuing basis in periodic reports — Form 10-K and Form 10-Q. Overall revision of Regulation S-K, the repository of the substantive disclosure requirements of the integrated disclosure system; Form 8-K for current reports; and other procedural and substantive rules will also be part of this effort. In addition, review of Form S-14, the registration form used for most business acquisitions, and other rules affecting negotiated acquisition transactions is scheduled to follow the integration projects; the review will cut down on the size and expense of the most voluminous registration statement at the same time as it ensures that investors are provided the information they need to make their investment decisions in a timely manner and regardless of the structure of the transaction.

Recently Implemented Selective Review Program:

Q. Four months have passed since the institution of the selective review program in the Division of Corporation Finance. Do you see any change in the information disclosed by registrants?

A. It is still too early to detect trends in changes of quality of disclosure that are due to selective review. All tender offers have now been put on a selective review basis. Few other areas remain that are appropriate for selective review.

Q. Do you see any other areas where the selective review procedure could be instituted?

A. There are in excess of 80,000 documents filed with the division each year, many of which comply in all material respects with existing disclosure requirements. Full review of each document filed on a timely basis would not be a proper allocation of resources; the manpower needed would have to be substantially increased from present levels while the benefits of improved disclosure and detection of fraud would be marginal.

Q. Does the selective review indicate a significant change in disclosure policy?

A. The selective review program does not reflect a change in disclosure policy, rather it represents a change in the division's approach for assuring that the various disclosure requirements are followed. Selective review has now been inaugurated for most filings made in the division. There is no significant area remaining where the technique is suitable. For example, proxy contests and first-time 1934 and 1933 Acts are very sensitive matters that merit full examination. In the case of many first-time 1933 Act filings in which accelerated effectiveness is sought, the full review is needed in order to make statutorily required findings (Section 8(a) of the 1933 Act).

Q. What means does the division have for determining when the optimum point in the use of selective review has been reached?

A. The division is responsibile for numerous other activities, in addition to the review of filings, including the promulgation of rules, forms, schedules and guides under the 1933 and 1934 Acts as well as responding to interpretative requests. In addition, branch personnel perform various other functions, including responding to communications from issuers, investors, and members of the public; applications for confidential treatment and extensions of time to file required reports and consideration of matters which may need to be 1933 Act filings seeking an accelerated effective date of course require full review. With respect to 1934 Act filings, some key filings certainly should undergo full reviews — such as Form 10 under the 1934 Act (initial registration). With other 1934 Act filings, the task is one of sampline: "How much sampling is sufficient to deter and detect fraud?"

SUPERVISION AND REGULATION OF SECURITIES MARKETS

National Market System:

Q. What progress has been made in the development of the National Market System?

When will it be operable?

A. The Commission continues to believe that the basic elements of a national market system will be in place by 1983. These basic elements, described more fully below, fall into three interrelated categories: 1) market information systems; 2) market linkages; and 3) price protection.

Market Information Systems

Over the past few years, significant progress has been made in the development and implementation of market information systems. A consolidated transaction reporting system has been operational for some time, making available to brokers, dealers, and investors last sale information with respect to all transactions in most listed securities — regardless of whether they are executed on the primary exchanges, the regional exchanges, or in the over-the-counter market. In addition, a functioning consolidated quotation system, long considered a cornerstone of the national market system, has become operational, and quotation information from all market centers is becoming an integral part of the nation's securities markets.

Despite the progress made in developing systems to disseminate last sale and quotation information, further enhancements to these systems are necessary to improve the usefulness and reliability of market information. In this regard, on February 19, 1980, the Commission adopted Rule 11Ac1-2 under the Securities Exchange Act of 1934 which, among other things, establishes minimum requirements governing the manner in which transaction, quotation, and other market information may be displayed by vendors of securities information ("Vendor Display Provisions"). The Vendor Display Provisions of the rule will become effective on January 3, 1982. In addition, on February 27, 1981, the Commission proposed for comment amendments to Rule 11Ac1-1 under the Securities Exchange Act of 1934 which, if adopted, would permit market centers, under certain specified circumstances, to disseminate quotations on a voluntary, rather than mandatory, basis. In proposing these amendments for comment, the Commission stated its preliminary belief that liberalizing Rule 11Ac1-1 in this manner would eliminate unnecessary regulatory restrictions on so-called "secondary" market makers while, at the same time, improving the accuracy and reliability of publicly disseminated quotation information. The comment period for the proposed amendments to Rule 11Ac1-1 expires on May 8, 1981, and the Commission expects to take action with respect to those amendments shortly thereafter.

Market Linkages

Progress has also been made in linking the trading markets for securities. Since 1978, a number of securities exchanges have been linked together through the Intermarket Trading System ("ITS"), which permits broker-dealers on one ITS market center to send orders to and receive orders from broker-dealers on other ITS market centers. The Commission has indicated, however, that in order for the ITS to become a permanent feature of a national market system, it must link all markets trading listed securities. In February 1981, as a result, in part, of Commission initiatives, the Cincinnati Stock Exchange, Inc. ("CSE") became a participant in ITS through a linkage between the ITS and the CSE's National Securities Trading System ("NSTS"). While the current linkage between the ITS and the NSTS is manual, the Commission expects that, if the CSE is willing to implement the necessary technical changes in order to effect an automated interface between the NSTS and the ITS, the other ITS participants will take whatever steps are necessary to implement such an interface.

Notwithstanding the progress made in linking the exchange markets, there is no linkage, to date, bewteen exchange markets and the over-the-counter market. Thus, firms making markets over-the-counter in listed securities ar eunable to send orders quickly and efficiently to exchange markets for execution or to receive order flow from exchange markets when their quotations are superior. In order to address this situation, on February 5, 1981, the Commission proposed to issue an order which would require the current ITS participants and the National Association of Securities Delaers ("NASD") to implement, by September 30, 1981, an automated interface between the ITS and the NASD's NASDAQ System, as enhanced to include, among other things, an order routing and automatic execution capability. That interface, when completed, will permit market professionals trading listed securities on participating exchanges or over-the-counter to route orders efficiently between those two types of markets and therefore significantly further the goals of a national market system. The Commission's staff is presently reviewing the comments received regarding the proposed order.

Price Protection

In a major policy statement released in March 1979, the Commission identified the achievement of inter-market price protection as a major near-term national market system goal. In pursuit of that goal, the Commission has identified two separate price protection initiatives. First, the Commission has encouraged, and it now appears that the ITS participants will adopt, a "trade-through" rule, which will generally preclude a broker in any ITS market center from executing an order at a price less favorable to his customer than is displayed by any other ITS market center. Second, the Commission has publicly called for the development of a facility which would store and display limit order information and thereby, in connection with the ITS, provide a mechanism necessary for a nationwide price protection for "away from the market" limit orders against the execution of block trades. The securities exchanges have responded to the Commission's request by committing to build a Limit Order Information System ("LOIS"). While there have been certain delays thus far in the development and implementation of that system, the Commission expects that LOIS will be operational by 1983 and that nationwide limit order protection will become a permanent feature of the national market system.

PREVENTION AND SUPPRESSION OF FRAUD

Personnel

Q. What will be the impact on the Commission's enforcement program of the President's proposed 8 percent reduction in personnel?

A. A reduction in the enforcement staff to the proposed level will cause an increase in the backlog of cases and response times, the early settlement of cases, a reduction in the development of initiatives to respond to new and emerging frauds, an inability to effectively respond to new Congressional mandates and the growth in the workload universe, an inability to coordinte and participate in efforts to contain the spread of organized crime and an inability to continue to improve the management of the program.

Investor Protection

Q. Would an improved program to provide information to investors on problem areas in the securities area have a significant effect on the incidence of securities fraud (vis-a-vis the same expenditure for enforcement activities)?

A. For many years the Commission has sought to provide assistance to investors both to aid them in avoiding problems and to help them resolve problems that have occurred. In the last few years the Commission has efforts to provide information and assistance directly to investors. The Office of Consumer Affairs, which was established in 1976, has been handling an increasing amount of correspondence from the investing public and at the same time it has been issuing a number of general warning type releases intended to assist the investing public in protecting itself. A considerable amount of information has now been made available to the investing public and it does not appear that an increased program to provide such information would result in any significant reduction in securities fraud and thus reduce the mount of funds needed for enforcement activities.

Fifteen Percent Travel Reduction

Q. What impact will the President's proposed 15 percent cut in government travel have on the Commission's enforcement program?

A. The enforcement program requires a substantial amount of travel funds in order to both conduct investigations and prosecute enforcement actions. The Commission's staff generally must make extensive trips in order to obtain documents and interview witnesses. In addition, the Commission is obligated to pay the travel expenses of witnesses who are subpoenaed to its offices. The trial of an enforcement action also frequently requires extensive travel for Court appearances and the taking of depositions, most of which the Commission does not control.

An increasingly serious situation is being created by the shortage of travel funds. An effective cut of approximately 40% in travel was required in fiscal year 1980 as the combined effect of reductions in budgeted funding levels, cost increases from inflated transportation costs, and higher per diem rates. These cuts have already had an important impact on case selection, early settlement decisions and investigative tactics. Increase in per diem rates and airfares which have already taken place in the current fiscal year will further curtail the conduct of investigations to the point where their efficency and effectiveness will be impaired.

Q. Why are not enforcement personnel exempted from this general reduction?

A. The Commission's budget as originally submitted provided for the travel believed necessary to permit its essential programs to function appropriately. Thus, when reductions were required, they were made on an across-the-board basis and covered all programs. The travel needs of all of the Commission's various programs will be closely monitored on a continuous basis and, if the need for travel funds for the various programs changes, then the current allocation of funds will be reexamined.

Insider Trading Violations

Q. Were many enforcement actions brought in Fiscal Year 1980 based on insider trading violations?

A. The Commission instituted numerous civil injunctive actions with respect to insider trading problems and obtained relief from any defendants. As a result of these actions, in excess of $500,000 of illegally obtained profits has been disgorged by defendants; in other instances, offers of rescission have been made. It is worth noting that several insider trading cases brought in the past year have involved misuse of non-public information by professionals, including attorneys and stockbrokers.

Enforcement Conferences

Q. What is the cost of conducting enforcement conferences and training for state, local and foreign enforcement personnel and can it be reduced? Also, what are the benefits of having such conferences?

A. The cost to the Commission for such programs is minimal. Each agency that participates in a joint enforcement conference pays the travel and subsistence expenses of its own employees.

The charge for the meeting room, itself, if any, is generally not significant. The same is true of the Commission's Annual Enforcement Training Program. Its primary purpose is to provide training to Commission employees. Other federal, state, local or foreign agencies who wish to send personnel must pay any travel expense involved.

The benefits of such programs are substantial. They not only provide training and improve coordination, they also result in a significant improvement in cooperation between the various agencies as a result of individuals having had an opportunity to become acquainted with each other.

PUBLIC UTILITY HOLDING COMPANY REGULATION

Q. What has been the extent of the Commission's monitoring of General Public Utilities Corporation as a result of the Three Mile Island nuclear accident?

A. The Commission has continued to monitor the financial, legal, and operational impact to the GPU system of March 28, 1979 nuclear accident at Three Mile Island. The Division of Corporate Regulation has continuous discussions with GPU personnel, investment bankers, U.S. Congressional staff and applicable federal regulatory agencies. The staff of the division has accumulated and interpreted financial and related data provided by GPU for the staffs of various Congressional committees.

Monthly status reports as to clean-up activities, insurance recovery, bank financing, TMI Unit 1 restart proceedings and projected budgetary requirements are carefully reviewed. The Commission's 8-K filing requirement is filed frequently as to those material events affecting the three operating utilities of GPU-Metropolitan Edison, Pennsylvania Electric and Jersey Central Power and Light. As of 1980, the GPU system has estimated over $855 million, exclusive of insurance coverage, over the next seven years for the cost to decontaminate and restore TIM Unit 2. The GPU system has $300 million in property and insurance coverage for TMI Unit 2.

PROGRAM DIRECTION

Q. What have been the accomplishments of the Chairman's Internal Audit Staff in its second year of operation?

A. The accomplishments are as follows:

1. The director started work on March 23, 1980.
2. A survey and ranking of 17 potential reviews was completed on July 18, 1980.
3. Two analysts and a secretary were hired by November 1980.
4. Some 4 projects were completed and another 4 were in progress by the end of February 1981. The projects include a computer facility security review and a telephone review to ensure the SEC obtains needed services in its proposed new building at the least cost. Other projects address specialized activities like financial and personnel matters.
5. An example of one audit benefit has been the identification of a need and method to allow non-attorneys to compete with attorneys for certain Commission positions.

Q. What is the current status of the Civil Service Reform Act in the Commission, especially performance appraisals and merit pay?

A. The Commission's performance appraisal systems, including the SEC's merit pay program, have been approved by the Office of Personnel Management. Coverage determinations have been made and affected personnel have been notified accordingly.

SEC employees have been appraised under their new performance appraisal system for 1980, and are updating their goals and objectives for the current appraisal period.

Merit pay employees (GS-13's, 14's and 15's) have been trained to develop critical job elements and performance standards. They will be appraised for the first time under their new system as of September 30, 1981. Most GS-14 and 15 employees will be covered by merit pay, but few at grade 13 will be.

Special task force groups are currently developing model critical job elements and performance standards for non-merit pay employees in the several disciplines and occupations found at the Commission. Non-merit pay employees will be appraised for the first time under the new system as of June 30, 1982.

INVESTMENT MANAGEMENT REGULATION

Q. The Division of Investment Management is currently engaged in a comprehensive regulatory reform study of various securities acts which is directed at simplifying the rules affecting investment companies and investment advisers. What progress has been made toward this goal?

A. The Division of Investment Management established a study group at the end of fiscal year 1979 to undertake a thorough review of investment company disclosure requirements under the Securities Act of 1933 ("Securities Act") and Investment Company Act of 1940 ("Investment Company Act"). The purpose of this study is to reduce unnecessary burdens on both the industry and the staff which result from present disclosure requirements.

The first recommendations resulting from this study, Rule 465 under the Securities Act and related amendments to the registration statement forms, 1/ were adopted by the Commission on August 25, 1980. This rule permits most post-effective amendments to registration statements filed by open-end management investment companies and unit investment trusts, other than insurance company separate accounts, to become effective automatically, without affirmative action on the part of the Commission or its staff. The rule is designed to accomplish two goals: eliminating staff review of purely routine filings, thereby enabling the division to concentrate its resources on those filings which need the review process in order to achieve complete disclosure; and perhaps more importantly, permitting registrants to assume greater responsibility for their compliance with the disclosure requirements of the federal securities laws.

The disclosure study is continuing its review of ways to eliminate duplicative reporting requirements in documents sent to existing shareholders and potential investors. In December, 1980, the Commission proposed amendments to its general regulation concerning the form and content of financial statements in disclosure documents, and to the registration statement forms for management investment companies, and proposed a new rule under the Investment Company Act, to standardize financial statement requirements in shareholder reports and prospectuses. 2/ As a result of the proposed amendments, management investment companies would be able to prepare a single set of uniform, updated financial

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1/ Securities Act Release No. 6229 (August 25, 1980), 20 SEC Docket 10005.

2/ Securities Act Release No. 6272 (December 15, 1980), 21 SEC Docket 908.

statements that could be used in both the prospectus and the annual report to shareholders. In addition, mutual funds would be given two optional ways of transmitting financial information to their shareholders and prospective investors: either to incorporate financial statements from a shareholder report by reference into the prospectus, or to send a prospectus as the equivalent of a shareholder report.

The Commission has also been active in the area of money market funds. On September 30, 1980, the Commission adopted amendments to Form N-1, the registration statement form for open-end management investment companies, and Rule 434d under the Securities Act, regarding investment company advertising. 3/ The amendment to Form N-1 requires the inclusion of a yield figure computed by a standardized method, and a quotation based on the computation, to be included in the prospectuses of money market funds. The amendment to Rule 434d further requires that any yield quotations used in advertisements under that rule be computed by the same standardized method. These amendments are based on the need of money market fund investors for comparable yield quotations, since such funds are marketed to shareholders primarily on the basis of yield. Prior to adoption of these amendments, money market yield quotations were not comparable and may have confused investors.

Most recently, the Commission adopted, on an interim basis, three forms to be used by business development companies to notify the Commission of their status under the Investment Company Act. 4/ The Small Business Investment Incentive Act of 1980 (P.L. No. 96-477), among other things, amended the Investment Company Act by establishing a new system of regulation for certain investment companies called "business development companies." In addition, as part of the release adopting the forms, the Commission made public the views of the Division of Investment Management as to the existing forms that should be used by business development companies to register securities under the Securities Act and Securities Exchange Act, and the disclosure that would be appropriate to inform investors about the special characteristics of business development companies.

The Study Group is considering a number of other proposals, including the possibility of simplifying the disclosure contained in investment company prospectuses. The goals of such simplification would be to make the disclosures easier for investors to understand and to reduce the costs and burdens of preparing and distributing prospectuses.

3/ Securities Act Release No. 6243 (September 30, 1980), 21 SEC Docket 1.

4/ Investment Company Act Release No. 11703 (March 26, 1981), 22 SEC Docket 602.

Investment Company Act Study

The Investment Company Act Study is responsible for reviewing the system of regulation of investment companies under the Investment Company Act of 1940. As a result of more than 25 rulemaking proceedings and interpretive releases initiated by the Study, the regulatory system has already been made significantly simpler and more efficient. The Study's guiding principle is to seek to lessen the Commission's involvement in investment company operations and enhance the role of investment company directors as overseers of management decisions. Most recently, the Commission adopted rules (1) giving investment companies broader authority to purchase securities from, and sell securities to, affiliated companies; (2) clarifying the status of certain "inadvertent" investment companies; and (3) permitting an investment company to pay the costs of the distribution of its shares when its independent directors determine such payments to be in its best interests. In addition, the staff of the Study Group consulted extensively in connection with the Small Business Investment Incentive Act of 1980 which established a specific regulatory system for business development companies. The Study is reviewing a number of possible major regulatory changes, some of which could require legislation.

Investment Adviser Study

The Division of Investment Management's Investment Advisers Study Group is conducting a study of the investment advisory industry as it exists today and the Investment Advisers Act of 1940, the rules and regulations thereunder and the Commission's administration of its investment adviser regulatory program. As the first step in this study, the Commission adopted revised Form ADV, the application form for registration with the Commission as an investment adviser. Using information collected pursuant to this revised form, the Commission is in the process of developing a comprehensive profile of the investment advisory industry. The profile will include such information as numbers of accounts and amount of assets under management, amount of assets actually in advisers' custody and types of services provided. Data from this profile will assist in determing areas in which the regulation of investment advisers can be improved.

The major goal of this study is to review the Investment Advisers Act and the Advisory industry and determine whether the statute and the Commission's investment adviser regulatory program are appropriate in light of the current structure and methods of operation of the advisory industry. The Study Group is preparing for the Commission a package of recommendations which are intended to simplify and clarify the investment adviser registration and reporting provisions.

The Study Group is also working on a recommendation that the investment adviser recordkeeping rules be substantially modified. The proposed changes would result in clearer requirements and requirements which are tailored to the investment advisory industry as it currently operates.

A major task the Study Group will soon undertake is a thorough examination of the possibility of self-regulation in the advisory industry. The Study Group will consider how self-regulation could be accomplished, the advantages and disadvantages of such an approach, and whether investor protections could be maintained under such a system. Self-regulation, if feasible, might have regulatory benefits for investment advisers without impairing investor protection. However, many legal and practical questions will have to be resolved before a specific proposal for self-regulation could be developed.

LEGAL SERVICES

Q. You state in your budget submission that one of the Commission's long-range objectives in the legal services area is to participate in as many _amicus curiae_ matters as needed to protect investor interests. While _amicus curiae_ participation by a government agency certainly furthers the individual interests of the party the agency supports, how does such participation further the interests of the public?

A. It is true that Commission _amicus_ briefs are helpful to the parties supported by the agency. But, that is not the purpose of Commission amicus participation. The Commission does not determine to participate in private litigation based on its view that one party or the other should prevail. Nor does the Commission generally participate on factual issues which are pertinent only to the particular case. Rather, the Commission participates as amicus when there are legal issues in the case that will have a long-range impact on the protections afforded to investors under the securities laws. And while it is true that public investors in the securities markets are a diverse group, they have certain interests in common: All investors, for example have an interest in being protected against fraud in securities transactions. If a court takes an unduly narrow approach to the application of antifraud provisions of the securities laws, that result will affect not only theindividual investor or class of ivnestors bringing that particular lawsuit, but also hundreds and perhaps thousands of other investors who subsequently may be deprived of the antifraud protections the securities statutes afford. The effect of adverse precent should not be underestimated.

The Commission's _amicus_ program is critical to the effective functioning of the agency with respect to the protection of public investors and the trading markets. Within the past several years a record number of cases involving the federal securities laws have been decided by the Supreme Court. In accordance with its recent practice of taking a restrictive view of the issues presented for resolution in such cases, the Supreme Court has decided certain significant questions, while leaving open the resolution of other questions of major importance to investors. For example, in _Steadman v. Securities and Exchange Commission_, decided this term, the Supreme Court held that the preponderance of the evidence is the evidentiary standard in Commission administrative proceedings alleging violations of antifraud provisions of the federal securities laws, but did not reach the issue of the appropriate standard in private actions for damages or injunctive actions — which may be brought by either the Commission or a private litigant — in federal district courts. Issues such as these will be decided by district courts and courts of appeals. The actual decisions will obviously affect the ability of the investing public to protect their interests in court, and are also likely to affect the Commission's ability to obtain equitable relief. Therefore, our continued participation as amicus curiae is vital to the protection of the public and the orderly development of securities litigation.

ECONOMIC AND STATISTICAL RESEARCH

Q. What role does economic and policy research play in decisions made by the Commission?

A. The Directorate contributes to the Commission's decisionmaking process through its provision of statistical and economic information pertinent to numerous major issues. Much of its work is done in conjunction with the Divisions of Corporation Finance, Market Regulation, Investment Management, or the Office of the Chief Accountant. In recent months projects which have involved the Directorate's expertise include the relaxation of Rule 144 constraints, the use of S-18 by first-time issuers and various studies of brokerage industry activities.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Consolidated Headquarters Building

Q. In light of the current staff reductions, has the Commission re-examined its justification for a new consolidated building?

A. At the present time there are approximately 150 employees that are at our First Street location, approximately 225 at our L Street locaction, and somewhat over 900 employees at North Capitol Street. In addition, the Commission has storage space at two other locations in the District and a small regional staff in Arlington. The reduction of 87 employees will not have any substantial impact on the problems which we experience because of the dispersed locations. A small number of positions will be taken from L Street, an even smaller number will be taken from First Street, and the remaining 70 or so positions will represent small reductions in a large number of offices on North Capitol Street.

None of the inefficiencies and problems incurred by operating out of multiple locations will be diminished as a result of the reduction in authorized staffing. Members of the public will still have to visit two and sometimes three locations, full time drivers and vehicles will still have to be relied upon to ferry personnel and files back and forth, and there will continue to be duplication of xerox areas, waiting rooms, library facilities, mail rooms, etc. Indeed, with a smaller staff operating out of the same number of locations, the burden is even greater becuase the demands on the remaining staff are apt to be increased.

Finally, it should be noted that the consolidated headquarters, which the Commission had been attempting to acquire over the past nine years, was not predicated on additional growth of the staff. Indeed, the 320,000 square feet originally sought by the Commission would still have resulted in relatively tight space conditions for many personnel. We believed that our most important objective was to bring the Washington staff together under one roof and that spaciousness was not primarily important. The small reduction in the staff at this time may allow us to spread out a bit more than was anticipated at the time the Commission and GSA initially established its space requirements, but it is more likely that we will occupy a slightly smaller area (approximately 300,000 square feet) than was originally evisioned. In fact, our 1982 space rental costs have been adjusted downward, based on this assumption.

Market Oversight Surveillance System

Q. The MOSS system is said to be an automated approach to monitoring the trading activities of the markets. This budget estimate requests eight positions for MOSS to serve as technical user liaisons to assist in MOSS operations. The staffing for the Office of Information Systems Management, however, is being reduced by eight staff years. Since MOSS is an ADP system, why is staffing of the Commission's ADP office being reduced at the same time a request is being made for eight additional positions to assist in MOSS operations?

A. The Office of Information Systems Management ("ISM") staffing will not be reduced in 1982. A total of 70 ISM personnel will be allocated to three program areas in 1982. 54 positions will be in the Program Direction program, 8 will be in the Prevention and Suppression of Fraud program, and 8 will be in the Supervision and Regulation of Securities Markets program in ISM. In 1981 64 positions are allocated as follows: 56 in the Program Direction program, and 8 in the Prevention and Suppression of Fraud program.

Q. What are the specific job classifications going to be for these eight additional positions?

A. The eight additional positions allocated to the Office of Information Systems Management for MOSS activities in fiscal year 1982 are located in the Supervision and Regulation of Securities Markets program. These positions were budgeted as series 334 computer specialists.

Q. How will the eight MOSS technical liaisons function differently from the staff currently working in the Market Surveillance program?

A. The eight additional MOSS positions will be devoted to the continued implementation of the MOSS system. This continued implementation requires that daily analyses of existing data sources be performed, dozens of automated and manual data interfaces with securities industry organizations be established and maintained, and data base and communications requirements for each phase of MOSS be developed. On occasion, tasks may involve technical liaison functions to assist in answering any questions or concerns raised and to analyze the impact of new market developments.

See also the attached copy of the First Six-Month Report to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce Regarding Implementation of the Market Oversight and Surveillance System, April 1, 1981.

Private Placements:

Q. On page 15 of the budget estimate, the Commission says it is analyzing private placement notifications to ensure that sales are being made in compliance with the securities laws. Last year, the Commission stated that private placement notifications were of limited empirical value, not systematically computed, and were used for enforcement purposes. In May 1980, the General Accounting Office reported that the Commission is hampered in obtaining compliance with the private placement exemption because it cannot readily obtain the promotional literature and otherinformation which could indicate misuse of the exemption. GAO recommended that this exemption be amended and the Commission use a "hot-line" to assist investors. Have there been amendments to Section 4(2) of the 1933 Act as GAO recommended, and what is the Commission's position on changes to this exemption?

A. In its report to Congress dated May 14, 1980, the General Accounting Office made recommendations to both Congress and the Commission. To Congress, the Report recommended that it amend Section 4(2) of the 1933 Act to:

1. Provide guidance and criteria under which the private placement exemption can be used; or

2. Provide the Commission with authority to establish mandatory rules conditioning use of the exemption; and

3. Require that issuers, unless specifically exempted by the Commission, notify the Commission when they intend to sell securities in reliance on the exemption, and provide the Commission with immediate access to promotional literature and other information relevant to the sale of such securities.

Since the Report was transmitted, however, no amendments as recommended by the Report have been introduced.

The Commission transmitted to Congress its memorandum in response to the report, a coyp of which is attached, in accordance with Section 236 of the Legislative Reorganization Act of 1970. As indicated in that memorandum, the Commission generally opposed statutorily-prescribed standards for the applicability of the private offering exemption (recommendation No. 1), and statutorily mandated notice requirements (recommendation No. 3), as too inflexible to be useful in changing economic and market conditions. However, the Commission indicated that it would not object to a statutory amendment that would confer authority to the Commission to promulgate rules which would establish standards that must be complied with in order to claim a private offering exemption (recommendation No. 2). This approach would retain flexibility, but would enable the Commission to adopt specific requirements in those areas where it believed the public interest would be served by such an approach.

Q. How is the Commission analyzing private placement notification to assure compliance with securities laws?

A. The information required on Form 146 is proving very helpful to the Commission's enforcement staff, particularly those in the regional offices. Where the facts and circumstances warrant a review, among the procedures which have been used by the Commission's staff are the following: the names of the securities, sellers and entities involved are cross-checked against information in the Commission's files; if necessary the issuer is contacted, for further information; appropriate inquiries are made where the same issuers, salesmen, or promoters are involved in repeated offerings; and special examinations may be made of broker-dealers invovled in a large number of such offerings.

Q. How many private placement notices were received by the Commission and what was the dollar value of these notices?

A. During the period from May 1, 1978 through March 16, 1981, approximately 12,450 Forms 146 were filed with the Commission involving an estimated $18 billion in proposed offerings under Rule 146.

Q. Has the Commission detected a reduction of private placements now that Rule 242 and Section 4(6) exemptions are in operation?

A. As the Report prepared by the General Accounting Office indicates, Rule 146 promulgated under Secton 4(2) of the 1933 Act is intended as a "safe harbor" for a private offering and is, therefore, not exclusive; e.g., any issuer may offer and sell securities in reliance on Section 4(2) without compliance with the Commission's Rule 146. Since the availability of the Section 4(2) exemption is not contingent upon a filing with the Commission, the Commission has no statistical basis for determining the number of private offerings.

Since the adoption of Rule 242 in January, 1980, approximately 156 offerings have been made in reliance on the Rule. Since the enactment of the Small Business Investment Incentive Act of 1980, two offerings have been made in reliance on Section 4(6). The number of Rule 146 offerings during the last fiscal year was 4,811. It does not appear that the number of Rule 146 offerings has been significantly affected by the availability of the two new exemptions.

Q. What has been the Commission's experience with Section 4(6) exempt filings?

A. Since the enactment of Section 4(6) (October 21, 1980), and the Commission's adoption of a notice-of-sales form (November 7, 1980) there have been two transactions made in reliance on the new exemption. Because of the limited number of filings, the Commission is unable to make any findings with respect to its use as an alternative capital raising device.

Q. Does the Commission intend to install a "hotline" and is it included in the Commission's budget request?

A. The General Accounting Office's sole recommendation to the Commission was that it establish and publicize a toll-free telephone service to permit early contact with investors and help strengthen oversight and enforcement capabilities. In its memorandum in response to the recommendations made by the GAO, the Commission indicated that such a service would require a substantial outlay of further resources, particularly staff time, in order for the program to be adequately implemented. Because the Commission's present resource level does not adequately satisfy existing operational requirements and, thus, additional staff levels could be better utilized performing other needed functions, the current budget request does not include a request for such a program.

Internal Audit Function

Q. One of the 1980 accomplishments was the initiation of an internal audit function at the SEC. Page 108 of the budget states, however, that current funding does not permit growth toward the 14 person auditing activity required according to GAO staffing guidelines for an agency of the Commission's size. What have been the accomplishments of the Internal Audit staff in its second year of operation?

A. The accomplishments are as follows:

1. The director started work on March 23, 1980.
2. A survey and ranking of 17 potential reviews was completed on July 18, 1980.

3. Two analysts and a secretary were hired by November 1980.
4. Some four projects were completed and another four were in progress by the end of February 1981. The projects include a computer facility security review and a telephone review to ensure the SEC obtains needed services in its proposed new building at the least cost. Other projects address specialized activities like financial and personnel matters.
5. An example of one audit benefit has been the identification of a need and method to allow non-attorneys to compete with attorneys for certain Commission positions.

Q. As of March 31, 1980, how many professional employees were assigned to the Internal Audit Unit?

A. As of December 31, 1980, three Auditors were assigned to the Internal Audit Unit. Two are Certified Public Accountants and the third has a background in EDP Auditing.

Q. Provide for the record the source of the statement that GAO staffing guidelines requires a 14 member staff for the Internal Audit Unit.

A. The estimate of 14 persons was based on the latest available information at the time of the size of federal audit staffs compared to budget size and number of employees. The basis of the estimate was the data contained in Appendix II of GAO Report FGMSD-77-3, November 19, 1976, "Greater Audit Coverage of Internal Financial Operations Is Needed." That appendix indicates that the average audit staff was seven persons per 1,000 employees. Since the SEC has roughly 2,000 employees, 14 was used as a rough estimate. A later GAO report (FGMSD-80-39, May 27, 1980, "GAO Findings on Federal Internal Audit -- A Summary") discloses in Appendix II that in fiscal year 1979 the average size of internal audit and IG staffs in the smaller inde- pendent agencies was 15, with a range of 1 to 34. The GAO does not "require" or suggest any specific staff size.

Financial Management Information System

Q. One of the long term objectives of the accounting and budgeting area is the establishment of a comprehensive financial management information system by 1983. The prior completion date for this system was 1982, but we were told last year that 1983 was the estimated completion date. What is the status of the new system and will the 1983 deadline be met?

A. The financial management system will not be completed by 1983. A review of the system by SEC management resulted in a change in time frame and scope of the financial management system. The Staff Time and Activity Tracking System (STATS) is not a component part of the financial management system. The total integrated system, based on the projected availability of programmer assistance, is now targeted for completion in 1988. The major effort for the next three to five years will be on the pay, time, and leave module. Few enhancements, if any, will be accomplished during that period of time. The present pay, time, and leave system is 13 years old and requires a complete redesign effort. This redesign is the cornerstone of the entire financial management system. When complete, pay, time, leave, personnel and position data will form a single data file for the Commission.

Lost and Stolen Securities

Q. In a November 1980 announcement the Commission stated it had in the first six months identified and traced $20 million in lost and stolen securities out of $3 billion the Commission knows as missing.

What is the regulatory cost-burden of this program to the securities industry?

A. Over 17,000 reporting institutions (federally-insured banks, securities organizations and non-bank transfer agents) have registered in the Lost and Stolen Securities Program ("Program") through the filing of a simple registration form with the Commission's designee. A reporting institution has the option of registering as a direct or as an indirect inquirer. In addition, reporting institutions must send to the designee a simple report indicating the discovery of lost, stolen, and counterfeit securities assigned CUSIP numbers. During 1980, approximately 221,000 reporting forms were received by the Commission's designee. Further, reporting institutions (except registered transfer agents) must inquire on securities coming into their possession (except when received from other reporting institutions). Many securities assigned CUSIP numbers are exempt from inquiry, however, when the transaction involves either little risk of criminal activity or a de minimus dollar amount. During 1980, approximately 433,000 inquiries were made by reporting institutions regarding over 1.1 million certificates.

A direct inquirer is charged fees for participation in the program by the designee. During 1980, the total fees charged 2,000 direct inquirers was approximately $800,000. By contrast, 15,000 indirect inquirers are not charged any fees by the designee. Instead, they negotiate those fees, if any, with their direct inquirers.

Q. Does this program cover counterfeit securities? If so, how many have been identified and traced in the last three years and their market value?

A. While the program includes counterfeit securities, reported discoveries of counterfeit securities were not separated from all other losses for statistical purposes until September 1, 1979. From that date to the end of calendar 1980, 80 certificates were reported to the program as counterfeit lwith a total reported market value of $114,915. No statistics have been generated that separate the number of "hits" (i.e., a certificate inquired upon by a reporting institution matches a certificate previously reported to the designee) on counterfeit securities from lost or stolen securities.

Q. How does this program benefit the industry and investors?

A. The purpose of the program is to reduce trafficking in missing, lost, stolen, and counterfeit securities (collectively, "lost securities"). From January 2, 1978 through December 31, 1980, 3,400 "hits," in terms of certificates, valued in total over $51 million, have occurred.

In addition, the validation and deterrence aspects of the program result in unquantifiable savings to the securities and banking communities and to public investors. That is, a data base exists against which reporting institutions can make inquire to identify promptly lost securities prior to further negotiation. If that data base did not exist or if reporting institutions failed to inquire, those securities would remain in the stream of commerc.e Inquiry, therefore, provides assurance to reporting institutions that securities coming into their possession have not been reported to the data base. Accordingly, inquiry facilitates further negotiation. In addition, when a "hit" results, the inquiring institution knows that it is about to engage in a transaction involving lost securities, and accordingly, can avoid the risk of monetary losses or other liabilities. Further, when a "hit" occurs, appropriate law enforcement officials are immediately notified, so that those securities can be removed from the stream of commerce and the wrongdoers can be apprehended.

OFFICE OF THE U.S. TRADE REPRESENTATIVE

STATEMENT OF AMBASSADOR WILLIAM E. BROCK, U.S. TRADE REPRESENTATIVE

ACCOMPANIED BY:
JOHN GIACOMINI, MANAGEMENT DIRECTOR
BILL MARONI, DIRECTOR OF CONGRESSIONAL RELATIONS

1981 APPROPRIATION AND 1982 BUDGET REQUEST

Senator Weicker. Our next request is that of the Office of the U.S. Trade Representative. The amount requested is $10 million, an increase of $633,000 over the 1981 base, and provides for 113 permanent positions. Permanent positions for fiscal year 1982 will be held at the current staffing level of 113. Appearing on behalf of this request is Ambassador William E. Brock, U.S. Trade Representative who is accompanied by John Giacomini, Management Director, and Bill Maroni, Director of Congressional Relations.

Mr. Ambassador, it is nice to have you here. I hope that you are the fellows in charge of our trade negotiations. Every time I pick up the paper I see somebody laying claim to your job. Quite frankly, I think it is in quite competent hands in the man across the table here. I am delighted to hear your request.

Ambassador Brock. Thank you, Mr. Chairman. I am in charge.

Senator Weicker. Good.

PREPARED STATEMENT

Ambassador Brock. Mr. Chairman, I will summarize my written testimony and submit it for the record.

Senator Weicker. The statement will be inserted in the record.

[The statement follows:]

STATEMENT OF WILLIAM E. BROCK

MR. CHAIRMAN, I AM HONORED TO APPEAR BEFORE YOU TO DISCUSS OUR RESOURCE NEEDS FOR FISCAL YEAR 1982, AND TO RESPOND TO ANY QUESTIONS YOU MAY HAVE. I HAVE WITH ME OUR MANAGEMENT DIRECTOR, JOHN GIACOMINI, AND BILL MARONI, OUR DIRECTOR OF CONGRESSIONAL RELATIONS.

MR. CHAIRMAN, THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE OPERATED UNDER A FIVE-YEAR AUTHORIZATION CONTAINED IN THE TRADE ACT OF 1974. THAT AUTHORIZATION EXPIRED AFTER FISCAL YEAR 1980 AND MUST BE EXTENDED. WE HAVE PROPOSED ANOTHER FIVE-YEAR AUTHORIZATION AND SINCE LAST SPRING HAVE BEEN WORKING WITH THE HOUSE WAYS AND MEANS COMMITTEE AND OTHERS TO ACHIEVE PASSAGE OF THE NEW AUTHORIZATION. THIS PROCESS WAS INTERRUPTED BY THE ELECTION LAST FALL. WE ARE WORKING TOWARD EARLY REINTRODUCTION OF THE BILL DURING THIS SESSION OF CONGRESS. YOUR STAFF HAS BEEN VERY HELPFUL AND WE HOPE FOR EARLY CONSIDERATION AND ACTION FROM CONGRESS.

USTR HAS LARGELY ACQUIRED THE STAFF AND FINANCIAL RESOURCES IT NEEDS TO CARRY OUT THE MANDATE OF REORGANIZATION PLAN NUMBER 3 WHICH REFLECTED THE WISHES OF THE CONGRESS. AS WE INDICATED TO YOU LAST YEAR, FOR FISCAL YEAR 1981, WE HELD TOTAL PERSONNEL AT 113 PERMANENT FULL-TIME POSITIONS AND AGREED TO REASSESS OUR STAFFING IN TERMS OF PERCEIVED

REQUIREMENTS FOR THE FUTURE. WE ALSO INDICATED THAT DURING THE PREPARATION OF OUR FISCAL YEAR 1982 REQUEST, WE WOULD REVIEW THE NEED FOR ADDITIONAL POSITIONS.

ONE OF MY FIRST TASKS WAS A THOROUGH REVIEW OF THE FISCAL YEAR 1982 RESOURCE REQUEST TO DETERMINE THE MINIMAL RESOURCES WHICH WOULD BE NEEDED TO CARRY OUT THE AGENCY'S RESPONSIBILITIES IN AN ADEQUATE MANNER AND IN KEEPING WITH THE OVERRIDING NEED FOR BUDGET RESTRAINT.

OUR RESOURCE REQUEST FOR FISCAL YEAR 1982 PROPOSES A BUDGET OF $10 MILLION, WHICH IS $633,000 OR 6.8 PERCENT ABOVE OUR CURRENT ALLOCATION. IN KEEPING WITH THE ADMINISTRATION'S DESIRE FOR BUDGETARY CONSTRAINTS, WE ARE NOT REQUESTING ADDITIONAL POSITIONS FOR FISCAL YEAR 1982, AND WILL HOLD TO THE CURRENT STAFFING LEVEL.

OUR PROPOSAL REPRESENTS A MAINTENANCE BUDGET FOR FISCAL YEAR 1982. ANY REDUCTION WOULD SEVERELY AFFECT OUR CAPABILITY TO DO THE JOB ASSIGNED TO US BY CONGRESS AND THE PRESIDENT. A SIGNIFICANT AMOUNT OF THE REQUESTED INCREASE WILL BE ABSORBED BY RAPIDLY RISING COSTS, ESPECIALLY FOR AIR FARES, AND WILL MEAN THAT WE WILL HAVE TO CONTINUE TO LIMIT TRAVEL. ALL INDICATIONS ARE THAT TRAVEL COSTS WILL ACCELERATE BY AT LEAST 35 PERCENT.

ONE OF OUR MAJOR GOALS IN THESE DAYS OF VERY TIGHT BUDGETS IS TO INCREASE PRODUCTIVITY AND MANAGERIAL EFFECTIVENESS WITH THE RESOURCES WE HAVE AT OUR DISPOSAL -- IN OTHER WORDS, GETTING THE MOST OUT OF WHAT WE HAVE TO WORK WITH. TIGHTER INTERNAL CONTROLS HAVE BEEN ESTABLISHED ESPECIALLY OVER TRAVEL, REPRESENTATION, AND OVERTIME FUNDS -- WITH GREATER DIRECT INVOLVEMENT IN THE CONTROL PROCESS BY THE SENIOR STAFF. WE HAVE GOOD ACCOUNTABILITY SYSTEMS FOR THE TRACKING OF FUNDS, TRENDS, AND SPENDING PATTERNS SO THAT MANAGEMENT CAN HAVE MORE ACCURATE, CURRENT REPORTS TO ASSIST IN SETTING THE AGENCY'S PRIORITIES AND IN THE DECISIONMAKING PROCESS. THROUGH OUR COMPUTER SYSTEM, WE ARE AIMING FOR MORE COMMUNICATIONS STREAMLINING FOR INTERNAL RESOURCE REPORTING.

AS YOU KNOW, FINDING ADEQUATE SPACE TO ACCOMMODATE THE AGENCY'S ENLARGED STAFF WAS A GREAT PROBLEM. WE WERE RECENTLY SUCCESSFUL IN ACQUIRING THE WINDER BUILDING, NEAR THE OLD EXECUTIVE OFFICE BUILDING, WHICH WILL ADEQUATELY HOUSE OUR STAFF AND PROVIDE EASIER ACCESS TO OTHER EOP OFFICES WITH WHICH WE DEAL ON A DAILY BASIS. OUR NEW QUARTERS NOT ONLY PROVIDE US THE SPACE WE NEED BUT WILL ALSO LEAD TO A SAVINGS IN RENTAL FEES. ONE REASON WE WANTED THE WINDER BUILDING WAS THAT THE RENT FOR THE BUILDING WOULD BE

LESS THAN THE RENT WE WOULD PAY IF WE ACQUIRED THE ADDITIONAL SPACE WE NEEDED IN OUR OLD LOCATION. AND SINCE THE BUILDING IS PARTIALLY FURNISHED WE WILL ALSO HAVE A SAVINGS ON FURNISHINGS.

MR. CHAIRMAN, I WOULD LIKE TO EMPHASIZE THAT IN LIGHT OF THE NEED FOR NATIONAL BUDGET CONSTRAINTS, I WILL CONTINUE TO HOLD DOWN SPENDING TO EFFICIENT LEVELS, WHILE ENSURING PROPER ACCOUNTABILITY OF ALL FUNDS WHICH ARE NECESSARY TO ACCOMPLISH OUR MISSION, AND WHILE AGGRESSIVELY PURSUING THE ADVANCEMENT OF THIS COUNTRY'S COMMERCIAL INTERESTS.

I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MAY HAVE ON OUR RESOURCE NEEDS OR ON OUR GENERAL OPERATIONS.

THANK YOU.

REORGANIZATION ASSESSMENT

Senator **Weicker**. Ambassador Brock, continue, please.

Ambassador **Brock**. First of all I would like to comment on the fact that we operate under a 5-year authorization which was started in 1974. The renewal was expected to occur last year, however it was cut off in the budget cutting process. I did want to tell you we have pending before the Senate and the House side a reauthorization and your staff has been particularly helpful in that regard and I want to express my gratitude.

In the last year we had largely acquired the staff and financial resources needed to carry out our reorganization mandate. We had at that time 113 full-time positions. We were asked on several occasions to reassess and see if it was adequate. We did, as a matter of fact, seek more positions, but in light of the President's decision to reduce the budget we frankly felt we had no alternative other than to maintain the current level. I might point out to you, that we have about 39 people in other-then-permanent positions. I would hope that we could change the level of staff next year because it does make for better management practice to have people under full-time rather than a part-time basis.

But we are operating as required, in a satisfactory way with the current level of funds. The increase of funds is to accommodate the increase in salary that has occurred. In that context, we frankly are operating with greater restraint than we did last year.

We have a very large component of travel, obviously in this job.

We expect travel costs to go up about 35 percent in this year and because of that very large increase, we are having to reduce expenses in other areas. The net of the increase requested is about 6.7 percent. I am confident we can fulfill the role of this office with that level.

That is a fair summary of where we are.

JAPANESE AUTO IMPORTS

Senator WEICKER. I suppose the concern to me is the matters for which you have jurisdiction, very much like my friend from the SEC, seem to be on the increase, both as to the number and as to substance. I really don't understand how you are expected to handle that while your personnel situation remains static.

I was dismayed recently to hear of the unusual participation of the Secretary of State in sensitive negotiations with the Japanese over import restrictions on automobiles.

The Congress went to considerable length and expense to create the position of Special Trade Representatives as an independent Cabinet-level official with specific jurisdiction over foreign trade. This was done to provide both bureaucratic clout to U.S. trade negotiators and to clarify in the minds of those overseas where this responsibility lies in our Government.

Mr. Ambassador, I have several questions here, but basically it relates now to the role, whatever that was, played by the Secretary of State and whether or not these matters have been defined insofar as the future is concerned as to your role and anybody else's role for that matter, whether it is Secretary of State, Secretary of Commerce, whomever. I think the committee would like to have a few minutes of explanation of where things stand and who is in charge. Have these past controversies been resolved and the future of course laid out with precision?

Ambassador BROCK. I appreciate it. First of all, it is fair to state on behalf of the Secretary of State, throughout this consideration of the automobile problem, we have had countless visits from Japanese officials at virtually every level, from the Prime Minister down to technicians. They have come to see not only me but the State Department, Commerce Department, Treasury, and Labor Departments. They, like many other people, have been trying to find their way in the administration. They didn't know where to go. I am sure they heard the same position from every party. When the Japanese went to see Commerce Secretary Baldrige, they heard the same thing I said.

The whole problem arose by implication, when the Secretary of State met with Prime Minister Ito, and it was assumed that the whole process, including any potential negotiations, had moved into the State Department. That simply was not accurate. And I don't believe the Secretary of State intended it to be so.

In order to be sure of where we both were, I did discuss the matter at considerable length with the President himself who acted to clarify the matter. My office has the lead role in advising the President on trade policy, establishing trade policy, and conducting all negotiations. That was explicitly stated by the President. I think it is clearly understood by our agency, and by the State Department. If there are any negotiations they are to be handled by the U.S. Trade Representative.

Senator WEICKER. Bill, do you foresee that you are going to be able to resolve this problem or handle this problem rather than have it handled by the Congress?

Ambassador BROCK. I think so. I told Senator Roth during my confirmation hearings that if the authority is inadequate to meet the responsibility, I will know within about a year, having gone through several of these exercises. I frankly would inform you so. I do not believe we have given the reorganization of January 1980 sufficient time to work, particularly since I have had only 2 months in the new administration. But understand, Mr. Chairman, that the issues with which we deal affect a very high percentage of all the Departments in this Government: Commerce, Treasury, Labor, Justice, State, Agriculture. As a result, there will be continuing problems that come from the fact that different agencies have different concerns on specific issues. I see it as my job, and this is the mandate the President and the Congress have given me, to avoid the interagency conflicts that have gone on in the past. The law is absolutely clear on that point. It is my job to pull together the various agency heads into a coherent whole and have the administration speak with one voice. I am confident that will happen.

Senator WEICKER. Now let me ask the same question in relation to the specific problem of auto imports. Do you feel that this problem between ourselves and Japan is to be resolved by your route or the congressional route?

Ambassador BROCK. I feel very strongly it has to be resolved our route. I really and truly fundamentally do not support further legislation. It has further hazard for the world trade system. Its implications go beyond the relationship between the United States and Japan. It goes beyond to the relationship of the United States and the South, the Third World as well as with Europe. It is not in our interest to start mandating specific limits upon imports. Rather it is in our interest to open up other markets and expand our productivity and strengthen the world trading system.

Senator WEICKER. I must confess that I agree with you. Just as a matter of philosophy, as Republicans, for a lessening of competition as the way to go. Competition is everything, prices, quality. I realize it is a tough nut to crack right now for many people, especially in that industry. Nobody is unmindful of that, but the future implications for the free market concept of any restrictions are enormous.

Ambassador BROCK. If I may interject, one of the problems we have is that I don't believe there should be automobile legislation before the Congress at all. It is true that if we are going to seek free trade, it must be a two-way street. While the Japanese have reduced their tariffs on manufactured products, they still maintain very tangible barriers on agricultural products and, the difficulty for U.S. companies trying to sell in that market is substantial today. I suggested to our friends that it would be, in their interest as well as ours to consider this not as a problem but as an opportunity to open up the markets, be more aggressive, seek expanded trade between the two nations. That means freer trade has to go their way as well as ours.

Senator WEICKER. Let me tell you, just so they get the message, even though you and I might be in agreement on the principle. If you ask me my evaluation as to what will happen in the absence of your being able to resolve it through negotiation, there will be legislation. I hate to say that because, as I say, I am opposed to it. I can look at my prediction in a very impartial way. I think I will lose in my opposition to it. The best hope for the resolution of this problem lies in your hands and in the hands of those with whom you are speaking. If any of them conceive of this as an empty threat, no more. The best way to describe it to you, I suppose, would be the close ties the Democratic party has with labor. Now as you well know, my more conservatively oriented colleagues on the Republican side could join with them, and that is a majority, simple as that. I believe we are able to keep these principles intact while at the same time resolving the problem through your efforts and the efforts of your organization.

Ambassador BROCK. It is very important that we do so for all of our interests. I have had several conversations, both in the House and Senate on both sides of the aisle, and as a result I am convinced that the legislation would pass today if it were brought up.

DEFERRAL OF GATT PAYMENT

Senator WEICKER. Yesterday we had testimony from State Department witnesses on the status of the administration's budget request with respect to international organizations. As you are aware, there is a policy to defer our contributions over the next 4 years to make one payment in October of each calendar year, 10 months after we receive our bill. I was told yesterday no other major developed country follows this payment policy.

Were you consulted about the decision to defer payments to GATT?

Ambassador BROCK. No, we were not. I think it was an inadvertent administrative oversight, frankly, but USTR was not consulted. I express my concern here because GATT is a very small organization and subject to financial pressure more so than some of the larger agencies, for example, the international financing institutions. I feel very strongly that the maintenance and strengthening of GATT is in our national interest.

Senator WEICKER. As we are proceeding through the sensitive process of implementation of the MTN, do you feel this decision may send a signal to our trading parties relative to our willingness to stand by commitments made to them?

Ambassador BROCK. Our trading partners have no reason to treat it as such. They are very supportive. I don't believe this development will form the basis for any such misunderstanding, but I do think we must be careful to assure these nations that we are going to continue to scrupulously maintain and implement our commitments, and that we are by no means changing those commitments in any form or fashion.

ROLE OF USTR

Senator WEICKER. Senator Hollings is with us, another colleague of yours is with us. He looks healthy, doesn't he? Unmarked.

Senator HOLLINGS. I apologize to the Chairman because I haven't been able to be very much in attendance.

Senator WEICKER. There is no reason for you to be here because all you do is take all my work and slash it to pieces in the Budget Committee.

Senator HOLLINGS. What is the matter with your jaw this morning?

Senator WEICKER. I just came from the dentist.

Senator HOLLINGS. I thought you insulted another Senator. Mr. Ambassador, we are very pleased to see you. We want to support you as strong as we know how. As you know, from your service on the Finance Committee, the Congress felt very keenly about the trade negotiations. Our actual relations were being adulterated by foreign policy considerations of a lesser portion, not major, but lesser portion in the State Department. It was turned over to State. From time to time, they have been wheeling and dealing for other than trade interests. On that basis, we said we can't afford to have this any longer, we have got to have someone at a very, very high level, very close to the President, very much on top of the coordination, coordinating, if necessary, between State, Treasury, and Commerce. I don't know anybody better qualified than yourself to fill that need.

Do you feel there is any way we can restore it—as I understand it, you are still called the Ambassador for International Trade in this administration, is that right?

Ambassador BROCK. I am. Senator, the chairman and I had a discussion of this matter at the first of this hearing. I stated for the record The President's commitment to me.

MULTIFIBER AGREEMENT

Senator HOLLINGS. I appreciate it. On the multifiber arrangement, can you tell us what progress is being made, if any, on that with respect to the textiles?

Ambassador BROCK. Yes, we have spent some considerable time internally discussing the best negotiating stance. I think everyone understands the need for a strong MFA. It is important not only to the United States but to our trading partners as well, that we have an orderly system developed in the marketplace for trade in textiles and apparel.

I have, as you may know, had good preliminary conversations with a number of individuals in the organizations representing the industry. During this month of April we hope to develop our position. It is my feeling that the United States, in this particular instance, is going to have to take the lead. There is a division even among some of the producing countries. If we are to have a real prospect of a stronger and more productive textile industry, it is up to our agency to develop the international agreement to achieve such a goal. We intend to do that.

Senator HOLLINGS. Very good. I notice some inaccurate history being cited with respect to steel and automobile problems. We started back in the late 1950's, in fact I testified before the Tariff Commission in 1960 during the Eisenhower administration, and when we lost out before the Tariff Commission, it was then General Eisenhower who said we have to do something about it. We moved on to the Kennedy administration. I notice now old quotas are terrible. It gave us some time to do some turning around. Our textile industry, which was lagging 20 years ago is now modernized, mechanized, electronicized, computerized and very, very competitive.

Our exporting is up. It is a very, very viable industry but it had somewhat of a chance to do that turning around. I don't think of automobiles but what to look at the real world, and not a theory of a free trade. If it is free with the others and free with all of us, that would be our leadership and our desire. The fact is with the nontariff trade barriers you are so familiar with, the others are not playing by the same rules. Our automobile industry needs a chance to turn around. That is a big interest, I am sure, with the administration.

TRADE NEGOTIATORS

I thank the chairman. I have some other questions about the negotiators and everything else like that. There was a critical article on that too. You must think I do nothing but read the papers about your office. Is something wrong with the trade negotiators? Do you have on board now a good reliable, and keen group of negotiators?

Ambassador BROCK. Yes, we kept Ambassador Smith in Geneva. We have asked Peter Murphy, who was involved in the last several years in the MFA program, to take the job of chief textile negotiator. All of the senior positions have been filled.

Frankly, it is simply a matter of taking the time to be sure competent senior people are on board. I am very comfortable and confident about the staff we have put together. We have not yet received confirmation in a couple of cases but that will come during the next few weeks.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Good. I thank you, and thank you, Mr. Chairman. I will submit these other questions to the Ambassador. Thank you very much.

Senator WEICKER. I have other questions, Bill, which I will submit for response for the record. Otherwise, best of luck to you. We will see you next year. Next year probably won't be as nice as this.

[The following questions were not asked at the hearing but were submitted to the Office for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WEICKER

FULLER DISCLOSURE FOR GSP CASES

Q. In reading your various responses to GAO's November 1980 report on GSP, I am pleased by your apparent desire to meet GAO at least part way and make your decisionmaking more transparent, particularly to those who are most affected by it. Offsetting this laudable goal is, nevertheless, a reluctance to really explain the basis of your product eligibility decisions. Since GSP decisionmaking presumably is not a random undertaking, doesn't it follow that you can be rather explicit about what you do and why you do it?

Excluding business confidential and classified information, could you tell us what the Congress, petitioners, and the general public for that matter, should not know regarding the basis of GSP-related decisions, and why they shouldn't know it? In other words, why not fuller disclosure?

In response to GAO's report, you seem to take the position that the sort of fuller disclosure recommended by GAO could not be useful to petitioners. How do you know that? Why not put everything on the table, the obvious exclusions aside, and let interested parties decide what is useful information and what is not? On what basis do you determine what is useful?

A. I appreciate the opportunity to further clarify the decisionmaking process that pertains to the Generalized System of Preferences (GSP). You are quite right in saying that the GSP process is not a "random undertaking." Indeed, it is anything but that. The Trade Policy Staff Committee (TPSC) and the GSP Subcommittee, which are the interagency groups that handle GSP matters, spend some nine months out of every year analyzing products for GSP eligibility. The rest of their time is spent explaining to petitioners and interested parties why they did what they did.

On a general level, reviews of products for GSP duty-free treatment concern a number of economic factors, including but not limited to, the competitive position of developing countries with respect to the particular product, current levels of imports and domestic production projections, the general economic condition of the domestic industry, the current level of and projected trends in employment in the domestic industry and the projected economic development benefits addition of the product to GSP would have for beneficiary developing countries. All products being considered for GSP treatment are subject to public hearings which are open to all interested parties before both the GSP Subcommittee and the U.S. International Trade Commission (USITC). The USITC forwards its advice on the probable economic effects of GSP treatment on domestic producers of competing articles for each item being considered to the President. This advice must be taken into account before any item may be added to the list of articles eligible for GSP.

At the conclusion of each product review, in April each year, our Office sends letters to petitioners in each denied GSP case to explain the rationale for denying the particular request. These letters summarize the major factors the interagency committee considered in reviewing the case. Although they are not exhaustive in their explanation, these letters are intended to give petitioners a sufficient amount of information on which to base a rebuttal in the event they refile the same request in a future product review. If a petitioner requires additional information in order to make a rebuttal, the GSP staff at my Office is available to discuss the case with him, or for that matter, any interested party. The GSP Information Center, administered by USTR, gives out all public information on any case in response to specific requests. The only information that is ever withheld is that which is classified (generally pre-decisional interagency memoranda and USITC advice to the President on individual products) or that which is business confidential. As mentioned in our responses to the GAO and to this Subcommittee, the denial letters sent to petitioners become a part of the public record pertaining to any case and are available for disclosure to interested parties upon request.

I would like to make one clarification to the last part of your question, which indicates that my Office makes value judgments about the usefulness of information to petitioners. In fact, we indicated in our response to GAO that we felt fuller disclosure to be especially appropriate for petitioners, in view of their proprietary interest. Our objection concerns the expenditure of government resources to publish information in the Federal Register which we believe will be of limited, if any, interest to individuals other than the petitioner. In any event, any party may request further information on a case from the GSP Information Center, so that no one is, in effect, excluded from receiving such information if he has an interest.

Since each petitioner is already notified by our Office, duplicating that effort through publication of notices in the Federal Register is not justified in my opinion.

GRADUATION IN GSP

Q. In its November 1980 report on GSP, GAO recommended that you include in the Annual Report on the Trade Agreements Program information as to how you are carrying out certain improvements in the GSP program. In your response to GAO, you agreed that some reporting might be useful, but not as frequent or as detailed as GAO recommended.

If you announce, as you did in April 1980, that you are going to improve the GSP program by instituting a form of graduation, doesn't it follow that you ought to be prepared to justify that improvement in the light of the actual eligibility decisions you make?

Can you specify (1) when product eligibility decisions are made for graduation purposes, and (2) what trade shifts you expect to occur as a result? In other words, can't you say when the President invoked his authority "to withdraw, suspend, or limit the application of the duty-free treatment" for graduation reasons and why?

If you cannot or will not convey this sort of information to the Congress, I for one would like to know why.

A. The graduation that was introduced in the GSP program, beginning with product changes implemented in March 1981, is being applied on a product-by-product basis, and necessarily becomes a part of the overall GSP decisionmaking process. In essence, an economically advanced beneficiary developing country is graduated on a product when it has demonstrated that it is competitive in that product and no longer is in need of preferential treatment. Graduation of a country can take place in one of three contexts: (1) when adding products to GSP for the first time; (2) when removing an item pursuant to a petition requesting such action; and (3) when considering whether to redesignate countries which were previously ineligible for GSP treatment under the competitive need limitations.

I announced on March 19 that five major beneficiary developing countries (Taiwan, Hong Kong, Korea, Mexico, and Brazil) would be graduated this year on a total of 29 items with a trade value of $510 million from the individual countries affected. In each of those products, at least three criteria were considered: the country's level of economic development, its competitive level in the particular product, and the overall economic interests of the United States. The effect GSP treatment for a country on a product was having on domestic producers of competing articles was also a factor in three cases. These were eyeglass frames and parts from Hong Kong, and stainless steel cookware and steel wire rope from Korea. Twenty-one items with a trade value of $355.5 million were not redesignated for the major five beneficiaries. The trade which was redesignated represents only 30 percent of the total amount eligible for reinstatement to GSP duty-free treatment. For five products added for the first time to GSP, one or more advanced developing countries was not designated for the product because it was found that the country or countries was already competitive in the particular item.

We anticipate that graduation in the GSP for the most advanced developing countries should result in expanded export opportunities for the mid-level and less advanced developing countries. Although the poorest developing countries presently do not have the capability to produce many of the products included in the U.S. GSP, over time it is anticipated that a more even distribution in GSP duty-free benefits among developing countries can result, at least in part, from the graduation measures being introduced for the first time this year.

In fact, it appears that some shift in benefits is already taking place. The share of the top five beneficiaries in total GSP duty-free imports dropped to 60 percent in 1980 from previously steady levels of about 70 percent since 1976. To further expand the share of the less advanced countries and in recognition of their limited export capabilities, seven handicraft articles were just added to the GSP product list. These will be of particular interest to many of the countries which do not export many GSP eligible products.

My Office will be happy to answer any questions the Subcommittee may have on the graduation process. There is detailed information available in the March 19 press release issued by our Office, and the staff at the GSP Information

Center will be available for consultation concerning any product about which you may have further questions. I have with me at the moment detailed lists of the 29 products affected by graduation this year. I will be happy to submit them for the record should you care to see them.

GSP DENIAL LETTERS

Q. In its November 1980 report on GSP, GAO recommended that you more fully explain why petitioners' requests to change product eligibility are denied. While your response was partly responsive to GAO's recommendation, on a crucial point you balked. You said that you will prepare summaries of your considerations for each GSP case. You also said that "while the summaries will not discuss the relative importance of each fact in a case, they will present the major factors considered."

Is it possible to isolate, in at least a general way, the relative importance of each factor you consider in a product eligibility decision?

Am I correct in assuming that that is a part of the intellectual process you use in making a decision?

Assuming that it is, can you tell us why you are reluctant to share this information with petitioners? Do you think they should know what it is about their petition-related argument that you find less than compelling and why?

A. Senator, I think you are absolutely correct in emphasizing our responsibility -- indeed, obligation -- to inform petitioners to the fullest extent possible of the reasons why their cases were denied. I share your concern in that area.

It is my firm belief that the notification process the GSP program uses -- the denial letters to petitioners -- is a viable one for this purpose. These letters summarize the major factors considered by the interagency committee in each case and interrelate them so that their relative importance to the decisionmaking process can be understood. The assumption in the past, I believe, has been that the petitioner is the person most familiar with the case, the product's characteristics and the general market situation; and, consequently, that it is necessary to outline only key considerations for him. Perhaps this is not the best approach. The best and most helpful step for us to take may be to expand the information contained in these denial letters. In this way, both the petitioner and other interested parties, through the GSP Information Center, can be more fully informed. The denial letter notification process soon will be underway, and I will see to it that the concerns you have expressed today are passed to my staff so that more complete responses can be prepared.

I might take this opportunity to add that I believe the GSP program has been administered in an open fashion. The annual product reviews are open to any interested party, both through public harings and through written submissions. The GSP Information Center assists both domestic and foreign parties in obtaining any materials desired on particular product petitions or the operation of the program in general. Petitioners or other interested parties are welcome to talk to my GSP staff if they have additional questions on cases during annual reviews or after denial letters are sent. I hope you and your staff will feel free to use the GSP Information Center should you require information on the program.

Items Eligible for Redesignation for which Duty Free Treatment was not Reinstated in 1981.

TSUS	ITEM	COUNTRY	1980 VALUE
147.98	Mangoes Nov. 1 April 30 inclusive	Mexico	710,595
245.20	Hard Board	Brazil	14,492,582
389.61	Art Flowers	Hong Kong	37,544,493
650.89	Scissors and Shears 50¢-$1.75 1 Doz.	Hong Kong	378,462
652.84	Springs and Spring Leaves for Autos	Mexico	13,416,429
653.48	Cast Iron Stoves	Taiwan	19,225,487
653.93	Cast Iron Cookware	Taiwan	3,452,220
654.07	Cast Aluminum Cookware	Taiwan	1,311,706
660.42	Truck Diesel Engines	Brazil	7,532,955
678.50	Machines and Machine Parts NSPF	Hong Kong Korea	33,435,390 41,331,760
683.70	Flashlight and Parts	Hong Kong	2,805,120
688.45	Electrical Art and Parts NSPF	Hong Kong	42,293,667
692.32	Automobile Parts NSPF	Brazil	40,462,080
727.23	Directors' Chairs	Korea	1,541,940
735.09	Inflatable Balls NSPF	Taiwan	6,896,062
735.20	Playground Equipment and Parts	Taiwan	37,757,147
740.11-15	Various Gold Jewelery	Hong Kong	61,719,302
TOTAL VALUE			366,307,397

Items Removed From Duty Free Treatment for Countries by the GSP Petition Review

Product Additions

TSUS	ITEM	COUNTRY	1980 VALUE
337.40	Jacquard Silk Fabric	Hong Kong	96,045
		Korea	337,614
355.81	Coated Fabric	Taiwan	5,501,721
706.27	Textile Flat Goods	Hong Kong	3,011,386
		Taiwan	6,734,783
706.61	Other Flat Goods	Taiwan	12,105,475
		Hong Kong	9,001,138
727.11	Rattan Furniture	Hong Kong	14,021,950
		Phillipines	16,145,503
	TOTAL		66,955,615
Product Removals			
642.16	Steel Wire Rope	Korea	36,950,086
653.94	Stainless Steel Cooking and Kitchenware	Korea	32,343,680
708.47	Eyeglass Frames	Hong Kong	18,100,000
	TOTAL		71,103,766
GRAND TOTAL			138,059,381

DIVISION OF RESPONSIBILITY
WITH STATE DEPARTMENT
Commodities

The Trade Reorganization specifies that the Trade Representative shall be responsible for U.S. policy with respect to commodities; but can delegate authority to the Department of State. Previously this responsibility rested with the Department of State.

I have noted with interest in reviewing the State Department budget that there has been no change in the number of positions assigned to commodity matters and would like to know what agreements have been made between State and USTR with respect to both policy and the conduct of negotiations on these matters.

Q. Has the Office of the U.S. Trade Representative made any official delegations of authority to the State Department?

Who is responsible for commodity negotiations and to what extent does USTR rely on State Department staff?

A. USTR is responsible for commodity negotiations. No agreements have been made with respect to commodity policy or negotiations, nor has USTR made any official delegations of authority to the State Department in these areas.

The goal of USTR is to ensure effective U.S. representation to international commodities meetings and negotiations. Since assuming the lead role in the commodities area mandated by the reorganization, USTR has striven to attain this goal. Clearly, throughout much of 1980, we were not staffed up to assume the major role in commodity negotiations. For that reason, and in deference to the experience of the State personnel already involved in the negotiations or discussions in process at that time, we did not, in many cases, assume the leadership of delegations.

That situation has now changed. Our commodities section is now fully staffed. Consequently, except in unusual circumstances, we do head U.S. delegations to the major commodity negotiations or conferences. However, we continue to rely on State Department staff as we do on other agencies such as Commerce and Treasury. State Department continues to have an important impact in policy formulation. Their overseas posts provide information that is critical to development of U.S. positions. USTR recommends that a State Department representative be included on most delegations. In many instances this is facilitated by State having two commodities officers in London where many conferences are held.

TRADE REORGANIZATION

Question

When will the Administration make an assessment as to how well the 1979 trade reorganization is working? What are your views at this time?

ANSWER

In our view, it would be premature to evaluate the 1979 trade reorganization for at least 1 year, and in the case of the Foreign Commercial Service (FCS), probably another 2-3 years. The changes were just being absorbed when the change in Administration occurred. Until our new appointees are in place and have a chance to operate under the present system, we would find it difficult to assess its viability. The FCS reorganization will take longer to assess because, to date, there has been little turnover in personnel and inadequate time for the retraining that will be crucial to its success.

Question

Do you see any disadvantages to having trade, investment, commodity, and energy specialists placed in several executive departments, including State, Treasury, Commerce, Energy, and your Office?

ANSWER

It is inevitable that agencies with a significant interest in these issues will want to maintain sufficient expertise to represent their interests in the formulation of policies. It might be more efficient from a Government-wide perspective to have a more centralized structure, however, it is likely that agencies would still need their own internal capabilities.

USTR STAFFING LEVEL

Q. Under the reorganization of trade responsibilities, the Office of the U.S. Trade Representative was expanded from 59 to its currently authorized 113 positions. What are the pros and cons for placing more emphasis on staff support from the executive departments and reducing your staffing level?

A. The goal of the Office of the U.S. Trade Representative is the establishment of a comprehensive, overall trade policy. All staff efforts are directed toward that goal.

The USTR does rely heavily on the analytical resources of other agencies. For the most part, this process works well. Occasionally, we do have problems in mobilizing the resources of others to respond to our priorities. However, the more serious problem is the lack of adequate analytical resources anywhere in the government. This is most severely felt by our agency in the area of analyses of the industrial sector.

We do not see any practical way to reduce the USTR staffing level while accomplishing mandated goals and rising workloads and demands on staff time, from our varied constituencies. To compensate for this by relying more heavily on other departments in the Executive Branch may not be feasible. In fact, we had hoped for an increase in our staffing level in Fiscal Year 1982 to create greater permanence in key positions. Given the urgent need to hold down spending, we will remain, in fiscal year 1982, at the same staffing level we have this year and which we had in fiscal year 1980.

I am sure that other agencies are feeling the crunch as well and will set priorities in using their resources to accomplish their particular mandates. However, through an effective interagency network of cooperation, we will continue to ensure that adequate resources are designated to trade policy issues and to use the expertise available in other agencies to the the best advantage.

Deferral of Contributions to the GATT

Q. Were you consulted about the decision to defer payments to the GATT?

A. No. The State Department is responsible for US contributions to International Organizations, including the GATT. While this activity involves the interests of other departments, State makes the basic decisions on funding programs. In this particular instance, through an administrative oversight, the USTR was not consulted.

Q. As we are proceeding through the sensitive process of implementation of the MTN, do you feel this decision may send the wrong signal to our trading partners relative to our willingness to stand by commitments made to them?

A. Our trading partners would not have a basis for such concerns. The United States has scrupulously implemented the commitments we made during the MTN through the Trade Agreements Act of 1979 and subsequent administrative actions. Our funding of the GATT will not affect our implementation efforts. However, to the extent that the GATT monitors the implementation by other countries, any weakening of that institution would be detrimental to US trading interests.

Q. Is there reason to be concerned that we may not have a receptive forum for discussion of problems which may arise in implementation of the MTN?

A. The GATT, like the USTR, is a relatively small organization. As a result, it is more sensitive to funding changes than a large organization. Therefore, our deferral of contributions to the GATT is likely to have more of an impact than it would on a larger organization.

The United States has taken a leadership role in the GATT since its inception in 1948. Other countries look to us for signals on where the GATT is going and how active a work program it should have. If the United States is perceived as taking a less than enthusiastic approach to the GATT, they might well seize on this to decrease their own program. The effectiveness of the GATT very much depends on the United States.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

STATEMENT OF J. CLAY SMITH, JR., ACTING CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ACCOMPANIED BY:

- **PRESTON DAVID, EXECUTIVE DIRECTOR, OFFICE OF THE EXECUTIVE DIRECTOR**
- **LEROY D. CLARK, GENERAL COUNSEL, OFFICE OF THE GENERAL COUNSEL**
- **BROOKE TRENT, DIRECTOR, OFFICE OF PROGRAM PLANNING AND EVALUATION**
- **LEFFORD B. FAUNTLEROY, JR., BUDGET OFFICER**

PREPARED STATEMENT

Senator WEICKER. Our next request is that of the Equal Employment Opportunity Commission. The amount requested is $140,389,000 and 3,468 positions, reflecting an increase over the base.

Appearing on behalf of this request is J. Clay Smith, Jr., Acting Chairman; Preston Davis, Executive Director; Brooke Trent, Director, Office of Program Planning and Evaluation; Lefford B. Fauntleroy, Jr., Budget Officer; and Leroy Clark, General Counsel.

We will have your statement included in the record in its entirety at this point; and I would be more than glad to receive your remarks in any way you care to present them, Mr. Smith. So the floor is yours.

[The statement follows:]

STATEMENT OF J. CLAY SMITH, JR.

Mr. Chairman and Members of the Committee: I am J. Clay Smith, Jr., Acting Chairman of the Equal Employment Opportunity Commission. On Tuesday, March 3, 1981, President Reagan appointed me as Acting Chairman of the Equal Employment Opportunity Commission. I am pleased to appear before you today and present for your review and consideration the proposed Fiscal Year 1982 Budget of the Commission. With me are: Leroy Clark, General Counsel; Preston David, Executive Director; Brooke Trent, Director, Office of Program Planning and Evaluation; and Lefford Fauntleroy, Budget Officer. Each of these individuals has played an active role in the preparation of these budget requests and can answer with specificity any questions you have today.

For FY 82, the Commission is requesting $140,389,000 and 3,468 positions. Approval of resources at the level requested is essential if the Commission is to fulfill its twin objectives to enforce various employment discrimination statutes effectively and efficiently and to exercise oversight and coordination in the federal sector, in order to eliminate duplication, inconsistency, and unnecessary paper work burdens imposed on the respondent community.

The budget request is consistent with the President's recommendations and reflects the painstaking efforts of Commission staff to accommodate necessary cutbacks, without substantially sacrificing or undermining any of the agency's enforcement efforts. Before addressing the specifics of our budget request and proposed activities, however, I would like to highlight the Commission's accomplishments of the last several years.

As the members of this Committee are no doubt aware, the Honorable Eleanor Holmes Norton resigned as Chair of the Commission in mid-February of this year. The Commission under her leadership and with the support of the Commissioners witnessed dramatic improvements in the agency's operations and its credibility, both with protected classes and in the employer and union community. The improvements are manifested throughout many of the Commission's operations and have enabled this agency to carry out its mission more effectively and efficiently.

PROCEDURAL REFORMS

Major procedural reforms instituted in three model offices beginning in September 1977, and subsequently implemented nationwide enabled the Commission to reduce substantially its staggering inventory of backlogged Title VII charges while remaining current in the processing of new Title VII charges. By the end of 1977, the Title VII backlog consisted of 100,000 unprocessed charges. Through the application of specialized backlog reduction procedures, however, by the end of FY 80, the backlog was reduced by 65%; 80% will be eliminated by the end of FY 81. Total elimination, originally projected for FY 82, must now be deferred to the end of FY 83, in light of current budgetary restrictions.

Similarly, the introduction of rapid charge processing procedures, with a clear focus on early factfinding and settlement attempts before evidence becomes stale and parties uncompromising -- has enabled the Commission to resolve Title VII charges, on the average, within four months of receipt. Forty-six percent of all charges are being resolved through the execution of voluntary negotiated settlement agreements, with resulting monetary benefits averaging $3,400 per charging party. These figures are in stark contrast to those which characterized Commission administrative enforcement efforts in the past, when average processing time was over two years, and only 14% of all cases were successfully resolved at the administrative level.

Broad-based patterns and practices of classwide discrimination are subject to potential Commission enforcement activity through two programs: the Early Litigation Identification program (ELI), which combines the efforts of the legal units and continuing investigation units in each district office; and the Systemic program, operated in accordance with the Commission's statutory authority under Section 707 of Title VII.

The Commission has utilized its systemic authority in the past; however, both ELI and the Systemic program as now designed are products of the organizational and procedural reforms instituted during the past three years. Both programs are operated at the district office level, with corresponding headquarters components to assure consistency of operation and, where appropriate, nationwide coordination. Both programs seek to target for enforcement action those respondents whose discriminatory employment practices impact adversely on substantial numbers of minorities, women or older workers. Importantly, the targeting criteria utilized in both programs seek to assure that the "worst" respondents will be reached "first." Reliance on the "worst-first" rationale serves a three-fold purpose: first, those individual victims most in need of governmental action to assure protection of their rights receive assistance on a priority basis; second, governmental resources are more effectively used when channeled into combatting practices of the worst offenders of Title VII, the Age Discrimination in Employment Act (ADEA) and the Equal Pay Act (EPA); third, and most important, employers and other persons subject to the Commission's jurisdiction who voluntarily seek to remove discriminatory obstacles to equal employment opportunity are provided encouragement and substantial insulation through the assurance that they themselves will not be targeted for enforcement activity. In other words, the strategy is to encourage employers to comply voluntarily while scrutinizing very carefully those who appear not to. The programs have been increasingly successful. In FY 80, our twenty-two district offices processed 850 ELI cases, of which 180 resulted in voluntary conciliation agreements. Sixty-two Systemic investigations were initiated during FY 80. On the whole, during FY 80, the Commission approved the filing of 227 Title VII enforcement actions and 128 ADEA and EPA suits. Substantial benefits were obtained as a result of lawsuits resolved in FY 80.

We believe that as the ELI and Systemic programs become better established, their operation will strengthen the Commission's enforcement efforts substantially. In particular, as the Commission's credibility is enhanced through these programs, even greater voluntary initiatives to remove employment discrimination, as an alternative to Commission and court enforcement, will be stimulated. Thus, while budgetary restraints have necessitated scaling down our previous projections, the Commission remains firmly committed to our Systemic and ELI programs and will endeavor, within resource limitations, to carry out the mandate of Congress to identify and strike down those patterns and practices of discrimination which continue to disadvantage whole classes of people in the workforce.

ORGANIZATIONAL REFORM

Members of this Committee are aware of the major organizational changes instituted within the Commission during the past three years. These substantial changes were implemented both in the field and at the headquarters level. The existing field structure reflects a careful evaluation not only of programmatic needs of the Commission, but also geographical considerations relative to the intake of charges. The original structure of the Commission has changed dramatically. The then-existing district and area offices were carefully scrutinized to determine appropriateness of location. Five regional litigation centers, and seven regional administrative offices were abolished.

Twenty-two district offices and 27 area offices were established in locales with high concentrations of potential charging parties. Legal and administrative staff were placed in the district offices, thus allowing them to provide a full complement of services, both compliance and legal. Area offices are available for charge intake and rapid charge processing.

Title VII has always required the deferral of charges to appropriate state and local agencies. In the past, the Commission's procedures failed to utilize these agencies effectively. As part of the reorganization, however, the Commission established a more efficient state and local program. We currently have work-sharing relationships with 69 state and local agencies, who share in the processing of charges. Among the services provided state and local agencies by the EEOC as a result of these agreements is training in charge processing which is essential to assure high quality processing standards and nationwide uniformity.

Thus, our new partnership has served to provide essential support to state and local agencies, and to further the objectives embodied in the Title VII deferral requirement. In the process, Title VII enforcement has become more rational, by eliminating a substantial amount of duplication and inconsistency. Charging parties and respondents now know that, for the most part, final action by a state agency with respect to a charge processed pursuant to a worksharing agreement, in effect, constitutes final Commission action. While the Commission reviews all state findings and reserves the option to reject them, where appropriate, this option is rarely exercised. Thus, the prospect of obtaining two bites of the apple -- which is both costly and time consuming -- is minimized.

Organizational restructuring at the headquarters level complements that in the field. The Commission's Office of Field Services has overall operational responsibility for the administrative functioning of each district and area office. The Commission's Office of Policy Implementation provides technical substantive guidance to the various field offices, through the issuance of compliance manuals and Commission decisions with respect to novel or controversial employment discrimination issues. It also plays the critical role of developing various policy statements for presentation to the Commission. These policy statements may take the form of guidelines or Commission resolutions. Guidelines are not binding on the respondent community. Rather, they provide essential guidance as to the state of the law: what the courts, and the Commission, have determined to be violative of Title VII, the ADEA or the EPA. Guidelines also establish uniform standards to be applied on a nationwide basis. They also share the all-important role of providing substantial insulation from enforcement to those respondents who attempt voluntarily to bring their employment practices into line with the policies outlined in the guidelines.

FEDERAL SECTOR OVERSIGHT AND ENFORCEMENT

Congress recognized the major strides taken by the Commission in streamlining its operations, and in response, overwhelmingly approved the transfer of certain new authorities to the Commission, in 1979, including jurisdiction over federal sector equal employment opportunity and affirmative action programs. Under this responsibility, the Commission has developed Management Directives and Instructions for submission of Multi-Year Affirmative Action Plans, pursuant to Section 717 of Title VII, throughout the federal sector. The multi-year approach is a significant and meaningful departure from previous efforts at monitoring the achievement of equal employment opportunity goals in the federal sector. Through its focus on results, the multi-year approach is designed to provide an incentive for federal agencies to enhance their equal opportunity posture within reasonable time frames. As is true of Commission efforts in the private sector, the Multi-Year plan instructions seek to encourage voluntary actions by federal agencies, providing the agencies with substantial latitude in determining the means most appropriate for attaining their goals.

In the area of processing federal employee appeals, the Commission succeeded, in FY 80, in eliminating the appeals backlog. Moreover, despite serious deficiencies in resources and an ever-increasing caseload, the staff production rate has increased substantially, and is expected to exceed the FY 80 rate by 28% in FY 81. The appeals operation has met the critical objectives of assuring the consistency of decisions within the federal sector itself and, where appropriate, the full application of standards and law developed in the private sector, thereby eliminating the double standard that too often prevailed between the public and private sectors.

Congress also approved the transfer to the Commission of the responsibility for coordination of issuances by federal agencies relative to equal employment opportunity, in order to eliminate duplication, inconsistency, confusion, and burdensome paperwork. The Commission's efforts at coordination have taken two forms. First, a special office was established whose ultimate responsibility is to meet the objective of eliminating duplication, inconsistency, and burdensome paperwork. This responsibility has been carried out through reviews of numerous proposed sister agency issuances, as well as through a comprehensive survey of over 1,300 private and public employers to ascertain their views on examples of duplication and inconsistency resulting from federal enforcement efforts. The results of this survey have been analyzed and will be used to provide specific long-range direction for coordination efforts in the future. Also in FY 80, as a result of coordination efforts, three major federal agencies withdrew plans to implement reporting systems which would have duplicated reporting requirements of other agencies and imposed an unnecessary burden on respondent employers.

Second, the Commission has approved several initiatives specifically designed to streamline equal employment opportunity enforcement efforts. Very important among these is the new Memorandum of Understanding with the Office of Federal Contract Compliance Programs, designed to assure coordinated -- rather than contradictory -- efforts in the areas where our jurisdictions overlap. Specifically, the Memorandum calls for the deferral of certain complaints received by OFCCP to the EEOC, and vice versa. In addition, it provides for the sharing of vital enforcement information. Implementing instructions are currently being developed. An equally important example of efforts at coordination was the issuance by the Commission of one set of Uniform Guidelines on Employee Selection Procedures, replacing the two differing sets administered previously by government enforcement agencies. Adoption of the guidelines reflected the Commission's commitment to making the federal enforcement effort more uniform and more rational.

AGE AND EQUAL PAY ENFORCEMENT

The Commission also received jurisdiction over enforcement of the Age Discrimination in Employment Act (ADEA) and the Equal Pay Act (EPA). Despite an unexpectedly high volume of charges under both statutes, we have successfully assumed these new responsibilities. I should stress, however, that the charge increase was significant. Charge intake under the ADEA grew from a total of 5,400 in FY 79, to 8,300 in FY 80. Similarly, the FY 79 intake of 1,600 EPA complaints grew to 2,300 EPA complaints in FY 80. Staffing to process this influx of age and equal pay complaints was grossly inadequate. Although approximately 50% of the Department of Labor's employees trained in age and equal pay enforcement transferred with the function, the dramatic increase in complaints necessitated the assignment of Title VII resources into these two programs.

In response to these increases, the Commission developed new procedures for the processing of age complaints in the latter part of FY 80. The procedures, patterned largely after those utilized under Title VII, rely on rapid charge processing and factfinding for resolution of the vast majority of age complaints. A specific percentage of complaints which present the likelihood of providing substantial remedies for large numbers of persons will be designated for extensive investigation and, where appropriate, litigation.

In the equal pay area, the Commission's strategy is to coordinate enforcement efforts under the Equal Pay Act and Title VII as much as possible, since the two statutes have overlapping jurisdictions. Indeed, the Commission anticipates that approximately 75% of all equal pay complaints will be processed concurrently under both Title VII and the EPA. Finally, with respect to both the EPA and the ADEA, guidance has been provided to the field for the initiation and conduct of directed investigations, instituted pursuant to the Commission's independent investigative authority under each statute.

Even prior to the introduction of new procedures, however, our closure rate, with benefits to charging parties was fairly high. During FY 80, 1,600 EPA and 6,500 ADEA cases were resolved administratively. We anticipate that the introduction of new procedures will enable us to increase substantially the closure rates under each statute, as well as the monetary benefits to aggrieved persons. In addition, the development of strategies for identifying the most egregious violations and violators of both statutes will enable us to utilize Commission resources most effectively, while at the same time minimizing the burden on employers and maximizing the likelihood of meaningful relief for victims of discriminatory practices.

I would only add at this point that the Commission's efforts to transform itself as an agency have not gone unrecognized. A recent independent study by the Office of Personnel Management, released in January 1981 and entitled "Management Initiatives and EEOC's Improved Productivity," cites the Commission's progress of the last several years, characterizing the Commission as a model for other agencies to follow. Similarly, the Office of Management and Budget, in its October 1980, Management Memo, highlighted the achievement of the EEOC, noting that the procedural and organizational changes discussed above "have led to greatly improved program performance, already apparent in 1979 and continuing strongly in 1980." The OMB stated further that "the EEOC experience should be of special interest to other agencies with responsibilities for investigating complaints from the public and those that require timely and accurate reporting on operational progress from extensive networks of field offices."

FISCAL YEAR 1982 BUDGET

Against this backdrop, I will turn now to the FY 82 budget request and a brief discussion of activities proposed for funding. As noted, we are requesting a total of $140,389,000 and 3,468 employees for Commission activities. The proposed FY 82 budget represents no increase in positions from the current year and a dollar decrease. While we believe that we can absorb these reductions in staff and financial resources without serious damage to our enforcement efforts, processing times will be lengthened. Specifically, backlog reduction will continue, though at a slower rate than originally projected. Total elimination of the backlog, originally projected for FY 82, is now projected to occur in FY 83; over 90% will be eliminated by the end of FY 82. The rate of productivity in rapid charge processing will be maintained, but the open inventory of charges will grow, perhaps substantially. With respect to inventories, we anticipate the following impacts of the budgetary reductions:

1. Title VII inventory will increase from 6 months to 9 months by the end of FY 82;
2. ADEA inventory time will increase from 7 months to 11 months by the end of FY 82; and
3. EPA inventory time will increase from 8 months to 12 1/2 months by the end of FY 82.

The Commission's original plans for enforcement of equal employment opportunity in the federal sector have also been modified. While we hope to maintain a high level of productivity in the processing of federal hearings and appeals, processing time, again, will increase. Specifically, the inventory of federal hearings will increase from 9 months to 10 months by the end of FY 82; and for federal appeals, the increase will be from 10 months to 13 months by the end of FY 82. The Commission will not attempt to absorb the entire federal equal employment opportunity complaint process, including the initial investigation of complaints, as originally contemplated. Rather, our efforts will be limited to the development of procedural issuances and providing technical assistance to improve and clarify procedural and substantive issues relating to the processing of federal EEO complaints.

As you will note, we are not proposing any new programs or a substantial expansion of Commission activities. Our objective is, as always, to enforce efficiently the various equal employment opportunity statutes under our jurisdiction, with the long-range goal of eliminating employment discrimination as a standard operating procedure of American industry. This objective can be realized only through the combined activites of resolving individual charges of discrimination and attacking broader-based classwide patterns, through the institution of systemic or directed investigations under Title VII and the ADEA and EPA. While we believe that we can carry out our mission with those resources requested in our proposed FY 82 Budget, we recognize that unanticipated increases in charge intake or costs of enforcement activity may necessitate future requests for increased funding.

Ours is an agency statutorily required to receive and investigate charges of employment discrimination. Consequently, the resource needs of the agency are dependent on the extent to which individual aggrieved persons choose to take advantage of our services. We are not in a position to predict with certainty what the demand for Commission enforcement will be. Historically, charge intake has consistently grown: this is particularly true with respect to age charges. Thus, our submission to you today reflects only our best judgment of what the demand will be and the manner in which we can utilize available resources to meet that demand.

I appreciate the support of this Committee over the past several years. Your sensitivity to the reforms we sought to implement and your responsiveness during appropriations hearings made our task an easier and, ultimately, more successful one. I trust that your support continues.

BUDGET REQUEST

Senator WEICKER. Mr. Smith, continue please.

Mr. SMITH. Good morning, Senator Weicker, and members of the subcommittee. As you appropriately indicated, in the request of the EEOC for fiscal year 1982, we are requesting $140,389,000 to support 3,468 positions. I have been on board as Acting Chairman of the EEOC for about 1 month and 3 days. Ever since that time, we have had the privilege of appearing before the House Appropriations Committee and now before the Senate Appropriations Committee.

You have already identified members of the staff with me who have had substantial input in preparing the budget. They will be available to answer your questions. I have prepared, which you have also, a summary of the proposed testimony, but I would like to summarize even that, pointing out some specific points and highlighting what I think to be some important considerations for the committee to consider in evaluating our proposed budget request.

Over the years EEOC has been viewed as a charge processing agency. Hence public concern about EEOC has been generally focused on backlog issues. We are concerned about backlog. However, I think the committee should focus on the fact in the last 3 or 4 years that the EEOC has become a better, more efficient operation. As the testimony points out, we have instituted management reforms. We are more oriented toward management objectives. Our staff is more oriented toward the ideological concepts of management. I think we have done a fairly good job in substantially reducing the backlog. Accordingly, we have been praised for our efforts.

The salient point that I would like to point out on page 3 of the summary is that since 1977, because of the specialized procedures and sound management efforts, the Commission, in terms of title VII, has reduced its backlog of almost 100,000 unprocessed charges by 65 percent. And we hope that 80 percent will be eliminated by the end of fiscal year 1981. That is our goal.

We project that a total elimination originally projected for 1982, must now be deferred to the end of 1983 in light of current budgetary restrictions.

Forty-six percent of all charges are being settled by way of voluntary negotiated settlements between the parties. And our current processing time has been averaging about 4 months, which is, of course, miraculous based upon our historical record. This is a substantial reduction in time, and our average dollar settlements now average about $3,400 per charge.

In fiscal year 1980, the Commission processed 850 early litigation identification—ELI—charges as potential litigation cases; 180 of these cases resulted in voluntary conciliation agreements.

We also processed 62 systemic investigations. The rest of the achievements of the Commission are appropriately stated in the summary which I request be a part of the record.

I think the most important thing for me to do here, Senator, is go to page 5 of the summary statement and address the issues as they relate to our current budgetary proposal.

As noted, we are requesting a total of $140,389,000 and 3,468 employees for Commission activities. The proposed fiscal year 1982 budget represents no increase in positions from the current year and a $1 decrease. While we believe that we can absorb these reductions in staff and financial resources without serious damage to our enforcement efforts, processing times will be lengthened.

Specifically, backlog reduction will continue, though at a slower rate than originally projected. Total elimination of the backlog originally projected for fiscal year 1982 is now projected to occur in fiscal year 1983. Over 90 percent will be eliminated by the end of fiscal year 1982. The rate of productivity in rapid charge processing will be maintained, but the open inventory of charges will grow perhaps substantially. With respect to inventories, we anticipate the following impact of the budgetary reductions: One, title VII inventory will increase from 6 to 9 months by the end of fiscal year 1982. Two, the ADEA inventory time will increase from 7 to 11 months by the end of fiscal year 1982 and, three, our EPA inventory time will increase from 8 to 12½ months by the end of fiscal year 1982.

The Commission's original plans for enforcement of equal employment opportunity in the Federal sector have also been modified. While we hope to maintain a high level of productivity in the processing of Federal hearings and appeals, processing time, again, will increase from 9 to 10 months by the end of fiscal year 1982. And for Federal appeals, the increase will be from 10 to 13 months by the end of fiscal year 1982.

The Commission will not attempt to absorb the entire Federal Equal Employment Opportunity complaints process, including the initial investigation of complaints, as originally contemplated. Rather, our efforts will be limited to the development of procedural issuances and providing technical assistance to improve and clarify procedural and substantive issues relating to the processing of Federal EEO complaints.

I will stop at this point, Senator Weicker, so that the committee may have an opportunity to ask questions. I think as the formal statement and the summary state, the budget situation for us will be rather severe if we are cut below the $140 million and some odd dollars that we are requesting and that the Reagan administration supports.

COMMITMENT TO CIVIL RIGHTS

Senator WEICKER. I suppose my concern is that I have seen a declining commitment to civil and individual rights during the past 2 years, declining at an accelerated rate, I might add. I have seen nothing in the first few months of this administration and this new Congress to alter my evaluation that even worse times lie ahead. So, I am going to be a little bit sensitive when we get a budget such as this in from the executive branch as to whether or not the commitment, insofar as can be handled by the executive branch, is there. I gather you have some concern as to the level of funding. This is actually below the previous administration's request, is that correct?

Mr. SMITH. By $20 million.

EFFECTS OF BUDGET REDUCTIONS

Senator WEICKER. You have four major enforcement programs: age and equal pay, employment opportunity in the Federal sector, State and local, and title VII. How do these reductions affect each of these enforcement activities?

Mr. SMITH. I think the most critical concern for an agency such as ours, is the extension of processing time of the individual charges. The point is that some humanity is involved when charge processing time is extended. People have to wait longer periods of time for a resolution.

Now this not only impacts upon the alleged aggrieved parties, the people, women, minorities, but it also has a substantial impact upon the business community. Charge processing extensions are going to increase management costs in the private business sector because personnel people will have to keep those charge files open for longer time periods.

We have learned over the years it has been the business community who has complained the loudest because the EEOC has not been able to process these charges in a more rapid manner. So, therefore, as an agency we become very concerned about being caught between the aggrieved parties and civil rights groups who are waiting for a resolution of their charges on the one hand, and, on the other hand, the business community saying that EEOC is taking too long. It will cost EEOC more money if we are not able to process those charges in a rapid manner.

This is the conflict we are faced with. Because of this conflict you can see the dilemma EEOC is faced with.

LEGAL ACTIVITIES

Senator WEICKER. I understand that the EEOC has developed a workload standard for attorneys of 10 cases at a time. What is the current case load per attorney?

Mr. SMITH. I will have the general counsel who is at the table, Mr. Clark, respond to that.

Mr. CLARK. I am not sure exactly what it is at this time. I can supply it for the record.

Senator WEICKER. The GAO says three suits per attorney.

Mr. CLARK. That sounds somewhere in the ball park. I will get that figure for you.

Senator WEICKER. How many attorneys does the EEOC employ in its field offices?

Mr. CLARK. We have about 10 to 11 attorneys in each of our 22 district offices.

ABAR PROGRAM

Senator WEICKER. In 1980 you assisted 800 private attorneys who were litigating employment discrimination cases. That figure is projected to increase to 2,000 in 1982. What level of assistance will you provide in 1982?

Mr. SMITH. We have the ABAR program. We have been able to assist the private sector in title VII and other antidiscrimination employment areas. This is a very important function. However, I believe in the months ahead, the Commission may have to evaluate the extent to which we are able to continue the ABAR program.

I am not saying at this time, Senator Weicker, that there is going to be an elimination of the ABAR program. I am personally committed to the private sector bringing these cases because the EEOC cannot do all of this work alone. But I can't say now.

Senator WEICKER. And what effect will it have on this aspect of your agency's work when and if the Legal Services Corporation does?

Mr. SMITH. When you put the whole litigation spectrum together it is one that requires close scrutiny because while the Legal Services Corporation may not be the lead agency for assistance in what we do, it advises people of their civil rights. So when you talk about elimination of that activity and possibly the elimination of the ABAR program it is obviously going to have some impact.

FEDERAL SECTOR PROGRAM

Senator WEICKER. One of the goals of the Federal sector program is to reduce the program inventory by 13 percent. Instead it looks as though you are going to be processing fewer cases in 1982 than 1981 and, accumulating a greater inventory in the outyears; is that correct?

Mr. SMITH. Yes, that is true.

Senator WEICKER. Under the Civil Rights Act, what is the timeframe for processing discrimination cases before an employee is entitled to go to the courts?

Mr. SMITH. 180 days is the period of time in which EEOC is statutorily required to investigate the charge.

Senator WEICKER. Are you meeting the timeframe?

Mr. SMITH. We are meeting the timeframe in many respects because we have the rapid charge processing system in place but the 180-day timeframe is not, the courts have not required us to stay within that 180 timeframe. Are you talking about the Federal sector, I am sorry? Is it 180 days?

Mr. DAVID. 180 days is correct, we do not do the investigation.

Mr. SMITH. I thought you were talking about the title VII. At the present time, the respondent agency does the investigation. Last year EEOC requested 80 positions so that we could conduct investigations for other agencies, but those positions are no longer available to us, and so at the present time agencies do their own investigations.

Mr. DAVID. We handle the hearings and appeals.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have questions. First of all, I have other questions of mine and questions of Senator McClure's to be submitted and responded to for the record.

I have some concern here as to what is going on. I think we will have a better focus on all this when we meet again a year from now. Has a chairman been appointed?

Mr. SMITH. No; President Reagan appointed me Acting Chairman on March 3.

Senator WEICKER. Have any steps been taken for permanent chairman?

Mr. SMITH. Not that I know of. I hope steps are being taken but I have no crystal ball.

Senator WEICKER. The Commission consists of a chairman, and how many members of the Commission?

Mr. SMITH. Chairman, vice-chairman and three additional commissioners, a total of five commissioners.

Senator WEICKER. By statute, are there terms of office? Do they expire on certain days?

Mr. SMITH. Yes, they are staggered terms.

Senator WEICKER. Are there any vacancies at the present time?

Mr. SMITH. Yes, there are two vacancies. We are presently functioning with a bare quorum, which is three members. Vice-Chairman Leach and Armando Rodriguez are the other two commissioners.

Senator WEICKER. Are they here?

Mr. SMITH. No, they are not here.

Senator WEICKER. Don't hesitate to stay in contact with this committee. We will track you as best we can here in the year ahead. I also feel those people should be brought up to strength as far as the Commission is concerned.

Mr. SMITH. We have had to postpone some Commission meetings.

Senator WEICKER. You have to postpone some meetings.

Mr. SMITH. That is right.

[The following questions were not asked at the hearing but were submitted to the Commission for response subsequent to the hearing:]

Questions Submitted by Senator McClure

Q. How many active cases does the Commission have in its case load in the Western Region which originated 3, 4, and 5 years ago?

A. As of 3/31/81 the Commission has approximately 130 unresolved Backlog charges from the states of Alaska, Washington, Oregon, and Idaho which encompass the agency's Seattle District Office. Of these, 60% have been assigned for processing and most of them should be completed by the end of the fiscal year. The entire Backlog is estimated to be eliminated by the end of FY 83.

Q. What plans does the Commission have to deal with these backlog cases in a timely manner?

Q. Does the Commission plan to improve the specificity of charges filed in future cases in order to expedite resolution of problems?

A. On 12/1/77 the Commission implemented Backlog charge processing procedures and totally revised Intake procedures. Charge Intake was assigned to professionals and includes a pre-charge counselling process to weed out clearly non-meritorious and non-jurisdictional charges, referring complainants to other agencies when appropriate. Charges taken under this system clearly delineate the specific discrimination alleged and are narrowed wherever appropriate to individual harm. As a result of the new Intake procedures charge intake decreased by over 25% in the first year. Our present non-jurisdiction rate is less than 5%.

Q. Does the Commission plan to review old cases to determine if issues need clarification in order to expedite resolution?

A. Under the Commission's backlog procedures, all cases filed prior to January 29, 1979, are reviewed by a District Office management team to identify issues and to provide processing instructions for staff. When issues are not clear, charging parties are contacted for further information.

The Backlog charge processing procedures include a five (5) phased processing system with delineated time frames for each stage to insure timely elimination. All charges are reviewed by management staff who provide specific processing instructions to the investigator. The second stage is charging party contact where efforts are made to locate the charging party to ascertain whether they are still interested in pursuing their charge and obtaining necessary information. If the charging party is located and information provided, the charge is assigned to negotiated settlement. If the charge is not settled it is only then assigned for investigation. If the investigation indicates that the allegation is unsubstantiated the charge is closed. If the allegation is substantiated the charge is then assigned to the final stage/conciliation.

Through this process the Commission has reduced its backlog of 100,000 charges on 12/1/77 by 67% as of 12/1/80. During the same timeframe the Commission has also been processing new Title VII charges - resolving 31,750 in FY 80 and 8,500 in the first quarter of FY 81.

QUESTIONS SUBMITTED BY SENATOR WEICKER

General Budget

Q. The Administration's FY 1982 request is $20 million and 322 positions below the previous Administration's request. The FY 1981 base ($140 million, 3,468 positions) is 309 positions below last year's level.

What effect will these reductions in 1981 personnel coupled with no growth in 1982 have on your activities?

A. The following table represents the impact of the two position levels: (1) the previous Administration's request which is our current level; and (2) the level proposed in the FY 82 budget.

(1) with 3,790 positions (level recommended in previous Administration's budget and approximate number of positions on-board now)

New Charge Inventory (Days)

	1982	1983
Title VII	225	175*
Age	290	200*
Equal Pay	300	230*
Hearings (Federal)	210	210
Appeals (Federal)	300	320

*With elimination of most of current 35,000 charge backlog in FY 82, backlog staff would be released to process new charges.

(2) With 3,468 positions (level recommended by this Administration and 322 positions below current)

New Charge Inventory (Days)

	1982	1983
Title VII	275	320
Age	340	365
Equal Pay	380	450
Hearings (Federal)	300	365
Appeals (Federal)	400	470

In addition to creating this new backlog of charges, just as the historic backlog is eliminated in 1983, the reduction in the 1982 budget impacts on the agency's ability to enforce the statutes for which it is responsible through systemic class actions and litigation. The systemic program will be set back - our commitment to add resources to systemic enforcement once the backlog was eliminated will no longer be possible. New litigation suits will drop from 535 to a projected 450.

As well as forcing us to reduce the number of litigation actions, the proposed budget will impact heavily on the nature of the litigation the Commission can bring for not only do we face a reduction in legal staff but also in the crucial litigation support funds required for effective litigation. Without the support of expert witnesses and sophisticated computer-generated workforce analyses, the litigation we are able to bring may not have the desired effects of bringing the full relief called for by the nature of the violation or settling legal issues. The age jurisdiction will suffer particularly in this regard since so many of the legal issues have yet to be resolved and most age cases require analysis by experts. In addition, we will have to significantly reduce our intervention activity even though it is in the public interest.

Also, the success of the compliance process, with its emphasis on and success in obtaining voluntary settlements, is integrally linked to a strong litigation posture. To the extent that employers who are in violation of anti-discrimination statutes know that our litigation strength is weakened, they are less inclined to resolve cases early in the administrative process, thus contributing to the growth of a new backlog.

Finally, the spin-off effect of a weakened litigation effort will be most pronounced in systemic and class action enforcement where successful conciliation efforts, which can have a significant effect on the patterns and practices of employers with major violations, will also be thwarted.

Q. You had planned to eliminate 82 percent of the Title VII backlog by the end of FY 1981. How much progress have you made toward that goal?

Q. What is your projection for FY 1982? (Should be to reduce 90 percent of the backlog.)

A. As of 12/31/80, 67% of the Title VII backlog was eliminated. It is estimated that 80% will be eliminated by the end of FY 81 with 90% eliminated by the end of FY 82.

Reductions in Transcripts

Q. The budget reflects a decrease of $165,000 in printing and reproduction funds from 1981 to 1982. How will this reduction affect the Commission's responsibilities?

Does this indicate a real decrease in Commission hearings and is it realistic given the increased costs of printing and reproduction?

A. There are several factors that are considered in making the $165,000 reduction in printing and reproduction funds. (Object Class 24)

The cost of transcripts for Federal sector complaint hearings are paid from Object Class 25. In the previous Administration's budget we asked for $2.000.000 for this item, but, with the reduction in this Administration's budget, we will not be able to support this item beyond the current amount of $800,000. This amount is not proving sufficient to support this requirement this year and with the probable increase in the Federal sector workload next year, it will be significantly inadequate.

The decrease of $165,000 in printing and reproduction funds (Object Class 24), will most heavily impact on the production of charge intake and other legal forms essential to processing complaints as well as on publications which explain the Commission's statutes and procedures.

The lack of funds to support this essential element of cost in conducting hearings will seriously hamper the process.

Reduction in Goal for Equal Pay Benefits

Q. In your January justification for the age and equal pay enforcement program, the agency stated one of its anticipated accomplishments in fiscal year 1982 would be to "obtain for each investigation completed an average monetary benefit of $1,000 for age and $1,350 for equal pay." Your current justification has revised this estimate to an average benefit of $1,000 for equal pay cases. What is the reason for this revision?

A. The original estimate for average monetary benefits for Equal Pay complaints completed was revised based on actual experience for the first quarter of FY 81 which showed that our original planning figure was unrealistic.

Cancellation of Hearings on Age and Handicapped Employment

Q. The original budget contemplated that the EEOC would conduct public informational hearings on Age and Handicapped employment issues. It appears that this budget does not include funds for those hearings. Is that correct? (Justification page 12)

Q. How much would the Commission require to conduct these hearings?

A. This budget request does not include the resources required to conduct public informational hearings on Age and Handicapped employment issues.

If the Commission conducted two hearings the estimated cost would be approximately $300,000 or $150,000 for each public hearing.

Q. What plans do you have in the area of Age and Handicapped employment issues?

A. Commission Plans in the Area of Age Employment Issues.

The Commission is considering proposed procedural regulations under the Age Discrimination in Employment Act. On January 30, 1981, the Commission published proposed procedural regulations in the Federal Register. 46 FR 9970. The proposed regulations are designed to govern the Commission's processing of charges and issuing of interpretations and opinions under the Age Discrimination in Employment Act. The public comment period ended March 31, 1981. No additional action has been taken by the Commission as of this date.

Additionally, the Commission is studying proposed substantive interpretations of the Age Discrimination in Employment Act. On November 30, 1979, EEOC published in the Federal Register proposed interpretations of the Age Discrimination in Employment of 1967, as amended. 44 FR 68858. The Commission proposes to adopt, with certain modifications, certain of the interpretations of the Department of Labor with respect to the enforcement of the Age Discrimination in Employment Act of 1967, as amended. As of this date, the Commission has not approved the proposed interpretations in final form for publication in the Federal Register.

Finally, the Commission is reviewing its interim regulations which provide for backpay and attorneys fees as part of an informal adjustment of a federal sector employment discrimination complaint. On April 29, 1980, the Commission published interim regulations to allow agencies to award backpay and attorney's fees as part of an informal adjustment of an employment discrimination complaint. 45 FR 24130. This amendment to 29 CFR 1613, revising the regulations on equal employment in the federal government, would apply to the informal adjustment of both age and handicap complaints. The interim regulations have not yet been approved by the Commission in final form.

Commission Plans in the Area of Handicapped Employment Issues

Under Executive Order 12067, EEOC's Office of Interagency Coordination has lead responsibility for all equal employment opportunity issuances and regulations covering handicapped discrimination in the federal sector. This includes reviewing Section 503 regulations, the employment aspects of all Section 504 regulations, the OMB interim guidelines on data collection, OPM regulations on special hiring authorities and various federal publications dealing with handicapped employment.

The Commission is presently evaluating proposed regulations published in the Federal Register on June 30, 1980, that would authorize awards of backpay to applicants for federal employment who were discriminated against on the basis of handicap. 45 FR 43794. The proposed regulations would also make it clear that a complainant has a right to file suit in federal court if dissatisfied with final agency action, or failure to act on a complaint of handicap discrimination. These changes are necessary in order to conform to the 1978 amendments to the Rehabilitation Act of 1973.

Also under review by the Commission are interim regulations permitting federal agencies to collect certain handicap information from applicants for employment. On February 6, 1981, the Commission published interim regulations, effective immediately, permitting federal agencies to collect handicap information from applicants in order to implement and evaluate special recruitment programs undertaken for affirmative action purposes. 46 FR 11285. The Guidelines have not yet been approved by the Commission in final form for publication in the Federal Register.

The Commission's Office of Review and Appeals (ORA) issues decisions on federal sector complaints alleging discrimination on the basis of handicap and our Office of Policy Implementation has begun work on identifying the major substantive legal aspects of employment discrimination against the handicapped and a survey of legal literature in the area.

Finally, the Chairman of EEOC and the Secretary of the Department of Education co-chair the Interagency Committee on Handicapped Employees, which was created pursuant to Section 501 of the Rehabilitation Act of 1973, as amended. EEOC is also a member of the Interagency Coordinating Council, created by the 1978 amendments to the Rehabilitation Act of 1973, which is responsible for government-wide consistency in the implementation of programs under Title V of the Rehabilitation Act.

Equal Employment Opportunity in the Federal Government

Q. In general, what is the status of the Equal Employment Opportunity program in the federal sector?

A. There are two important aspects of the Federal sector equal employment opportunity program: the Federal sector complaint process and Federal agency affirmative action planning. Both are mandated by Section 717 of the Civil Rights Act of 1964, as amended. Both Section 717 and the Civil Service Reform Act's legislative histories contain Congressional findings of chronic underrepresentation of minorities and women in certain Federal occupations, and at certain levels within those occupations. Both functions were transferred from the old Civil Service Commission (now OPM) to the EEOC by Reorganization Plan No. 1 (1978).

The federal sector complaint process involves the following procedures:

(1) an investigation by the employing agency;
(2) a hearing by the EEOC subsequent to the investigation upon request of the complainant;
(3) an agency decision; and
(4) an appeal to the EEOC by the complainant if (s)he does not prevail.

Thus, the only areas where the Commission has direct responsibility are at the hearings and appeals stages. Last year the Commission received 2,959 hearings requests and closed 2,184 hearing cases. More important, the function has for the first time been professionalized, because Complaints Examiners are now all experienced attorneys. Perhaps as a result of this, the percentage of decisions in which a finding of discrimination is recommended has increased nearly fivefold from 7 percent in FY 78 to 34 percent in FY 80.

The EEOC's Office of Review and Appeals has written decisions in 5,000 cases. Included in those 5,000 cases were 1,800 backlog cases inherited from the former Civil Service Commission and completed by a special EEOC task force. The productivity of the office is good and stands at 1.7 decisions per attorney per week. Intake, however, stands at 2,500 per year.

With regards to the Federal Agency Affirmative Action Program EEOC last year implemented a "Transition Year Program" to familiarize agencies with the affirmative action process long known to the private sector. The transition year instructions require agencies to:

- Conduct workforce analysis for the six most highly populous occupations in the agency workforce;

- Determine underrepresentation by comparing on-board representation of minorities and women to their presence in the appropriate civilian labor force;
- Set goals designed to eliminate underrepresentation where underrepresentation is in fact found;
- Detemine and eliminate agency policies, practices and procedures that create impediments to equal employment opportunity; and
- Include targeted recruitment efforts as mandated by the Civil Service Reform Act (5 U.S.C. 7201 — the Federal Equal Opportunity Recruitment Program (FEORP).

The Commission after close consultation with other Federal agencies, especially OPM, and based on the transition year experience, has now designed multi-year affirmative action instructions (EEOC Management Directive 707 (MD-707) that were passed by the Commission on January 9, 1981. The multi-year instructions were sent to Federal agencies on January 23, 1981 and an appendix containing underlying statistical data was sent to Federal agencies on April 10, 1981. The multi-year instructions reduce burdens on agencies by requiring only one plan every five years, instead of separate new plans each year. In addition, the plan includes new flexibilities for agency compliance with EEOC guidance.

Q. What mechanisms do you use in coordinating your responsibilities with those of the Office of Personnel Management and the Merit System Protection Board?

A. EEOC and OPM have coordinated on several major initiatives related to Federal equal employment opportunity programs. Much of this coordination has been mandated by law. Sections of the Civil Service Reform Act creating the Federal Equal Opportunity Recruitment Program (FEORP, 5 U.S.C. 7201) required EEOC to develop guidelines for OPM that would be used by OPM in developing its subsequent FEORP regulations and guidelines. Moreover, Executive Order 12067 (implementing portions of the Reorganization Plan No. 1) requires EEOC to lead a program of consultation and coordination among all agencies with equal employment opportunity and affirmative action responsibilities. More specifically, Section 1-302 of the Order requires EEOC and OPM to consult on the qualification and classification standards for all Federal employees that are performing functions in Federal agency equal employment or affirmative action programs.

Therefore, EEOC and OPM have had a long-standing informal interagency working group that has considered and resolved, among others, the following major issues:

- o Development of Federal Equal Opportunity Recruitment Program guidelines, regulations and guidance;
- o Development of new standards (GS-160 Series) for employees engaged in EEO and affirmative action activities;
- o Development of new regulations to govern collection of race and national origin data for Federal employees (particularly relevant to OPM's maintenance of the Central Personnel Data File);
- o Development of both transition and multi-year instructions Federal agency affirmative action plans; and
- o Development of guidance for Federal agencies on the prevention of sexual harassment.

With regard to the Merit Systems Protection Board, EEOC has instituted a mechanism whereby decisions on "new systems cases" (those administrative appeals of Federal employees EEO-complaints filed after January 11, 1979 -- the effective date of the Civil Service Reform Act) reversing MSPB are first sent to that agency for comment. Special panels are convened in case of differences of opinions betweeen EEOC and MSPB. Additionally, EEOC's Office of Review and Appeals has designated a liaison person who maintains periodic contact with the Merit Systems Protection Board to insure consistency between the two agencies.

Federal Sector Cases

Q. By reducing resources in federal sector discrimination matters will the federal government risk incurring even greater costs in litigation - assuming that some cases, which might be settled by EEOC, will be delayed beyond the 180-day period and wind up in the courts?

A. The relationship between the funding level of compliance resources (staff, primarily) available to an organization for its administrative processing of EEO charges/complaints and the amount of litigation of those charges/complaints is quite direct. The fewer the resources, the longer the periods of time between filing a complaint and the completion of its processing. The longer the processing time, the greater the potential liability that builds up. The greater the potential liability, the less likely a respondent is to settle the matter and the more likely the respondent will wait to see if the complainant goes to court.

There is ample data to support the statement that in the private sector many more charges are settled at less cost to the respondent and the processing agency, and with greater benefit to the complainant, when processing of a case starts immediately after filing. State agencies that process EEO complaints have had the same experience. Our Pilot Program, during which EEOC used private sector methods of processing with federal EEO complaints, yielded the same results.

Thus, there is every reason to believe that reducing resources available to EEO complaint processing will increase litigation of such complaints.

Q. I understand that EEOC has developed a workload standard for attorneys of 10 cases at a time. What is the current caseload per attorney? (GAO says 3 suits and decrees.)

How many attorneys does EEOC employ in its field offices? (About 300)

A. GAO's figures came from its review of two field offices in 1979 when the reorganization had just been implemented. Legal units in district offices were new. The stream of cases from the new charge processing systems was just beginning and cases from the old litigation centers had not even beem completely redistributed to District Office legal units.

The workload standard of 10 cases was established at that time as a long-range planning goal; with the reorganization so new, there was no actual experience on which to base the number.

Currently, there are 228 trial attorneys in district office legal units. They are carrying a caseload of 1,828 cases as follows:

735	cases in litigation (Title VII, ADEA, EPA)
627	early litigation identification (ELI) cases in process
111	systemic cases in process
355	cases in monitoring
1,828	Total

This represents a caseload of 8 per attorney and does not take into account their constant provision of legal advice to the office; the handling of FOIA requests, other disclosure matters and right to sue notices; and private bar referrals.

It also does not take into account that about 15% of the cases in active litigation are of such complexity that they require the full-time of more than one attorney, and some, several attorneys.

We believe that the 10-cases-per-attorney standard is still an appropriate planning figure with the legal caseload growing although not yet at a fully mature stage in all offices.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Q. President Carter requested $160,000,000 for the Commission for 1982. President Reagan has reduced the request to $140,389,000. Your statements indicate that the reduction will be absorbed by increasing the processing time for cases.

How was the reduction of almost $20,000,000 spread among the 3 budget programs of the EEOC?

A. The reduction is spread over the three programs as follows:

FY 82 ($ in K)	President Carter's Budget		President Reagan's Budget		Reduction	
	Pos.	($000)	Pos.	($000)	Pos.	($000)
Policy Executive Direction, Planning and Coordination	210	8,794	194	8,075	(16)	(719)
Salaries						422
Misc. Support						297*
Enforcement	3,350	132,219	3,054	113,807	(296)	(18,412)
Salaries						7,800
State & Local						5,000
Litigation Support						1,800
Transcript Cost						1,200
Travel, subscriptions, equipment rental and misc. support						2,612*
Program Support & Administration	230	18,987	220	18,507	(10)	(480)
Salaries						264
Misc. Support						216*
TOTAL REDUCTIONS	3,790	160,000	3,468	140,389	(322)	($19,611)

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*These reductions are required because there is a reduction in the overall budget from $141,246,000 in FY 81 to $140,389,000 for FY 82.

Q. EEOC now has 22 district and 27 area offices. In view of the budget curtailments, is it necessary to continue offices in such nearby places as San Francisco and Oakland, Cincinnati and Dayton, or Greensboro and Raleigh?

A. While there would no doubt be some savings by eliminating some of the offices indicated, increases in travel expense would be required and that portion of our budget has been reduced significantly. In addition the Rapid Charge Processing system with its focus on timely resolution through voluntary settlement is enhanced by the Commission's presence in those areas with significant charge volumes. The focal point of the process is a Fact Finding conference where both the charging party and respondent meet face to face to discuss the allegations and attempt to resolve them through settlement. In FY 80 the charge receipts for the offices mentioned were as follows:

San Francisco	718
Oakland	626
Greensboro	585
Raleigh	1,025
Cincinnati	819
Dayton	373

Of the offices indicated, only San Francisco and Oakland are close enough together where EEOC could realistically expect both charging party and respondent to travel from one office area to another for a conference.

We are however, giving serious consideration to eliminating field offices in order to better absorb the budgetary reductions.

Q. As a result of its January 1979 reorganization of the field offices, EEOC had about 80 surplus staff. Since EEOC has a no-reduction in force policy (This is also part of its employee's union contract) it is eliminating these staff through attrition.

- What is the status of the surplus staff that resulted from the January 1979 field office reorganization?
- What is this surplus staff costing EEOC?

A. EEOC's field reorganization included the conversion of 10 former District Offices to Area Offices. Under the Commission's new structure Area Offices only have the Rapid Charge Processing function (Intake and Fact Finding) except that the offices which were formerly Districts also had Backlog charge processing to handle the Backlog of charges existing at the time of the reorganization. Staff remained in those offices to process the Backlog charges. The number of positions assigned to Backlog in those offices were listed as the office's position authorization as "Overallocations". The offices were not allowed to fill vacancies since when the Backlog was eliminated they would not need the staff. These offices have been reduced by attrition since the reorganization. Those offices which are out of Backlog which still have overallocated positions have been sent Backlog charges from other offices for processing and in some instances are now processing age charges. There is no surplus or unutilized staff.

The EEOC does not have a no reduction inforce policy. During the field reorganization since the agency had received over 700 new positions and would shortly thereafter receive additional positions from the Civil Rights Reorganization of 1978 it was decided that the displacement of staff as a result of the reorganization would be minimized whenever possible. This was accomplished by letting staff remain in District Offices which were converted to Area Offices and process backlog charges as explained above. The agency did go through a reduction in force for the reorganization with staff given the opportunity to move to vacant positions created by our new authorization.

Q. In 1982 EEOC expects to decrease position utilization by 237 staff years in order to save $4,977,000. Can this reduction be accomplished by attrition or will EEOC have to change their no-reduction in force policy?

A. EEOC is planning a reduction in force in the summer of FY 81 in order to get down to a FY 81 end of the year ceiling of 3,468. Getting to the reduced ceiling will permit us to effect the reduce staff-years called for in FY 82.

Q. EEOC requires employers with 100 or more employees to report annually, on Form EEO-1, for nine job categories, the number of employees by their race and sex. This form has been criticized because it does not include wage/salary data, and is of limited use to EEOC to enforce Title VII of the 1964 Civil Rights Act. For example, partly because of the form's limitations, EEOC sometimes uses employment data the Department of Labor obtained under its contract compliance program to target employers for systemic work. EEOC has considered revisions to the form for more than 1 year, but has not yet revised it.

- You state on p. 11, in part, that a major accomplishment for FY 81 is to have streamlined the collection and dissemination of EEO survey information. Does this anticipate revising the EEO-1 Form? Will a revised EEO-1 Form solicit wage/salary data?
- What does it cost EEOC annually to obtain and process EEO-1 data? Is the cost justified by the limited utility of the data provided?

A. EEOC has streamlined the collection and dissemination of EEO survey information. The processing time has been reduced considerably, response time for filling requests for EEO data from other government agencies and the public has been reduced. A series of publications has been started giving wider distribution to race/ethnic employment data. Current data is placed on line for (immediate) automated access by EEOC field offices for use in investigations and conciliation of individual charges of discrimination resulting in quicker resolution of charges. The data collected are shared with other federal agencies, state and local Fair Employment Practice agencies (FEP's) for use in their equal employment opportunity functions.

The EEO-1 survey is conducted under the auspices of a joint reporting committee consisting of EEOC and the Office of Federal Contract Compliance (OFCCP) in the Department of Labor. The collected data for Federal Contractor's are routinely shared with OFCCP, thereby obviating duplicate collection of similar data.

Data for state and local FEP agencies for their jurisdictions are also supplied to those agencies with which the Commission has data sharing agreements. The Commission currently has data sharing agreements with 150 federal, state or local agencies. All of these use the EEO-1 data in lieu of collecting EEO data on their own. These data are supplied free of charge to state and local FEP agencies as prescribed in section 709(d) of Title VII of the Civil Rights Act of 1964 (as amended).

The data collected on the EEO-1 are unique and represent the only comprehensive set of race/ethnic and sex employment data which allow an assessment of the utilization of minorities and women in private industry. They provide a standard against which an employer's employment profiles can be measured in resolution of charges of employment discrimination.

As these data are collected on a recurring basis they provide the only measure of progress (or lack thereof) not only to the federal government but to employer's themselves who can compare their own profiles to other employers similarly situated. Additionally the EEO-1 data form the basis for affirmative action programs of government contractors. These data provide a measure of minority and female employment in the employer's specific industry or geographic area.

The cost to collect the EEO-1 data is approximately $500,000 for 1981.

As detailed above, these data are unique, are not elsewhere available, are absolutely essential for charge resolution, conciliations (settlements) and litigation by the Commission, are widely shared and used by other Federal, state, and local agencies, and minimize reporting and recordkeeping requirements which would otherwise result if these data were not available from the EEO-1.

We believe the cost to obtain the EEO-1 is not only well justified but is essential for the Commission to carry out its mandate.

While the data do not include salary information, they serve to measure minority and women representation, job assignments, and hiring practices of employers. The Commission has had a task force studying the feasibility of adding salary data; however, it has not yet come to a decision on this matter. Collection of salary data would require extensive additional recordkeeping by employers, greatly expand the survey form, extend the processing time, and significantly increase the cost both to employers and the government. Because of the varied methods of pay in private industry (annual salary, monthly, hourly, overtime, piecework, shift differentials, etc.) extensive research as to the proper method of collection would have to precede any implementation of such an expanded data requirement. Commission regulations would have to be amended and coordinated with the other data users, employers would need to be notified of the additional recordkeeping and reporting requirement and a reporting burden (recordkeeping) impact analysis would have to be conducted.

Q. Of the 12 authorized positions for the Internal Audit Office, how many are now filled?

What is EEOC doing to fill the vacancies?

What restructuring is being done during FY 1981 in the Internal Audit program?

Why is it necessary?

A. The Commission has only five of the positions filled in Internal Audit. We had anticipated expanding the audit staff but regrettably we cannot do so at this time given our current staff ceiling. Our reduced personnel ceiling for FY 81 mandates a Reduction-in-Force of approximately 300 persons in July of this year. Though every other headquarters and field office will be cut back, there will be no decrease in the Audit staff. We do not anticipate restructuring the audit staff given these budgetary and personnel ceiling restraints.

Q. On p. 17 EEOC states that an anticipated accomplishment for FY 1982 will be the implementation of clinical law programs in at least 10 District Offices. However, on the preceding page EEOC states that 800 private attorneys are already receiving assistance under the private bar program. In 1982 it is planned that 2,000 attorneys will receive such assistance.

Given the private bar program, why is there a need to establish clinical law programs in District Offices?

A. The clinical law program referred to in item #6 under FY 82 Anticipated Accomplishments, page 17, is a program in which volunteer law students are utilized in selected District Offices to render volunteer service in both the compliance and litigation units. Unlike clinical law programs in various law schools that the Commission has funded in prior years, this program does not involve funding of any private organization or group. The law students will be rendering volunteer assistance to the agency while learning about the statutes which the Commission enforces. We expect this program to (1) generate interest among law students in the areas of the laws the Commission administers (2) create an interest among qualified students in government service, and (3) stimulate those who complete their studies and become members of the bar to practice in the areas of civil rights and labor law. The long range effect should be to maintain a private bar sufficiently experienced in EPA, ADEA, and Title VII, to provide counsel to complainants needing legal assistance in pursuing remedies for alleged violations of the statutes EEOC enforces.

This volunteer program is totally distinct from the private bar program referred to in item #3 under FY 80/81 accomplishments, page 16. The private bar program here is one funded by EEOC, to provide a source of technical assistance to private attorneys who are handling litigation on behalf of charging parties. The majority of civil rights cases filed in the federal courts are filed by private charging parties, many of whom lack the resources to pursue the cases they bring without some assistance. The knowledge that there is a source from which a private practitioner, with little experience in this area of litigation, can obtain technical assistance, makes it easier for the complainant to obtain counsel. In this program, experienced practitioners, through programs funded by EEOC provide some degree of assistance to the private litigant.

Since the funded private bar program and the volunteer law students clinical program in the District Offices have separate and distinct purposes, the fact that we expect to experience an increase in the number of private litigating attorneys receiving technical assistance in FY 81, has no impact on the need for the volunteer programs.

Q. What is the nature of the problem with your ability to process age discrimination charges?

A. Charge volume in the age discrimination area has been far higher than anticipated. On the basis of the Department of Labor's experience, the Commission anticipated approximately 5,000 charges and complaints under the Act in the first fiscal year of enforcement. Instead, over 8,000 charges and complaints were received. About 6,500 of these were resolved in that fiscal year (or nearly 100 cases per investigator) — far more than our staff allocation initially had called for but less than the number of resolutions needed for our field offices to keep current.

In this light, the Commission has allocated further resources to age discrimination, increased its training efforts, and streamlined its procedures. Thus, in the first quarter of this fiscal year, we were able to resolve an average of 25 cases per investigator. Productivity (cases resolved) per investigator has remained fairly uniform throughout the Commission's twenty-four age units in the field and virtually all offices exceeded their goals in this area.

Based on first quarter reports for this fiscal year, our field offices managed to settle 25% of charges and complaints received with benefits. Amounts averaging about $2,500 per case were obtained in the first quarter. Average closure time for cases in the first quarter was similar to the average for previous quarters, about 142 days. For closure of Title VII cases, the average time taken is 130 days.

Q. What consideration did EEOC give to transferring staff from backlog and Title VII activities, as they become available, to processing age discrimination charges?

Q. Although EEOC has planned to transfer staff freed from backlog charges to the systemic program, since the systemic program seems to be working satisfactorily with its existing staff, could EEOC transfer staff from backlog charges to processing age discrimination charges without harming the systemic program?

A. The Commission prides itself on its measurement system for determining resource allocation to workload. We believe the tables included in the budget accurately reflect the number of charges that can be processed by available staff. To the extent that staff is removed from any function - backlog, new Title VII charges, Age charges, Equal Pay charges, Federal sector hearings and appeals - the number of charges processed and resolved will decrease, resulting in the serious consequences of delayed processing time already noted in our testimony and the answers to the questions asked by subcommittee members.

Q. In the justifications EEOC states on page 22 that its Federal discrimination complaint appeals workload is increasing and it is unable to process the appeals on a current basis. EEOC provides little additional information on this activity. (a) Why are appeals increasing? (b) What is EEOC doing to reduce the appeals workload?

A. (a) From 1972 to 1979, appeals from final agency decisions were processed by the Civil Service Commission. EEOC assumed this function as a result of the Civil Service Reform Act in 1979. The Commission believes the increase in appeals may be due to a perception that EEOC is more knowledgeable and sensitive to discrimination issues. In short, the EEOC may have been victimized by its own success. Also, leading to an increase in appeals is the fact that Federal employees are becoming increasingly aware of their employment rights and increasingly willing to exercise them.

(b) The EEOC must process all appeals which are properly filed. Hence, the Commission cannot control the number of appeals which the agency must process. The Commission had earlier envisioned that we would assume the investigative function from agencies so that agencies would no longer be in the position of investigating themselves. We believed that this would have had the salutory effect of eliminating many charging party's perception of a conflict of interest on the part of their agency-employer. The charging parties would have greater faith in an EEOC investigation and initial processing of their charge and therefore would be less inclined to invoke the appellate process. However, because of budgetary restrictions, the EEOC was unable to absorb the initial investigatory functions.

We believe that Federal employees will continue to appeal final agency decisions and that the number of appeals may dramatically increase as a result of proposed government rductions in force. The greater the number of employees EEOC can dedicate to this function the quicker the processing time of Federal appeals. However, the Commission faced with its own staff reduction, seriously doubts whether it will be able to dedicate more employees to this function. EEOC has eliminated an appeals backlog inherited from the Civil Service Commission through the use of a special task force and has increased productivity per attorney to about 1.7 decisions per week.

Q. On p. 37 EEOC requests $400,000 for equipment for FY 1982 -- a continuation of the 1980 and 1981 levels -- but provides no information on how it intends to use these funds. Before EEOC purchases additional equipment, it needs to get better control over and use of the equipment it has. Property inventory surveys conducted by EEOC headquarters during 1980 showed that District Offices had poor property controls, e.g. they did not know all the property they were accountable for nor its location, and inaccurate inventory reports were forwarded to Headquarters. In addition, equipment utilization surveys conducted by headquarters showed that district offices were underutilizing equipment such as word processing and micrographic equipment.

- What kinds of equipment does EEOC contemplate purchasing with the $400,000 requested?
- How does EEOC ensure that unneeded equipment is not obtained by District Offices?
- What has been done in response to the Headquarters' equipment utilization surveys that found some micrographic and word processing equipment was underutilized?

A. The Commission must forward to OMB each year its plan for the purchases of equipment. These purchases from GSA must be approved by OMB. We adhere to this process and make every effort to insure that equipment purchases are both essential to the Commission operation and cost-effective.

All equipment purchases with the exception of about $33,000 (estimated $1,500 per District Office) must be approved centrally by a designated office within our Commission Headquarters. Action has been planned and initiated which will result in better property use and accountability.

Currently we plan to purchase with the $400,000 requested:

- o replacement items for furniture and equipment which is no longer serviceable;
- o equipment for which it has been determined that it is more cost-effective to purchase as opposed to continued leasing; and
- o books for the 23 legal libraries maintained by EEOC.

We have initiated action to insure that all equipment is accounted for, that it is needed and used and reallocated equipment that is not properly used or required at some previous locations/offices.

SUBCOMMITTEE RECESS

Senator **Weicker**. The subcommittee will recess until April 21 at 9:30, at which time we will be hearing testimony from the International Communication Agency, the Arms Control and Disarmament Agency, and the Federal Trade Commission.

[Whereupon, at 10:50 a.m., Wednesday, April 8, the subcommittee was recessed, to reconvene at 9:30 a.m., Tuesday, April 21.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

TUESDAY, APRIL 21, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:40 a.m., in room S–146, the Capitol, Hon. Lowell Weicker (chairman) presiding.

Present: Senators Weicker and Cochran.

INTERNATIONAL COMMUNICATION AGENCY

STATEMENT OF JOHN W. SHIRLEY, ACTING DIRECTOR

ACCOMPANIED BY:

- JAY GILDNER, ACTING ASSOCIATE DIRECTOR FOR EDUCATIONAL AND CULTURAL AFFAIRS
- M. WILLIAM HARATUNIAN, ACTING ASSOCIATE DIRECTOR FOR BROADCASTING
- LEE JAY CHO, ACTING PRESIDENT, EAST-WEST CENTER, INC.
- STANLEY M. SILVERMAN, AGENCY BUDGET OFFICER

PREPARED STATEMENT

Senator WEICKER. Our first request is that of the International Communication Agency. The Agency's operations are covered by four separate appropriations totaling $561,402,000 and 8,158 positions for fiscal year 1982. This represents a net increase of $69,398,000 over the active and pending budget authority for 1981.

Appearing on behalf of this request is John W. Shirley, the Acting Director, who is accompanied by Jay Gildner, Acting Associate Director for Educational and Cultural Affairs; Mr. William Haratunian, Acting Associate Director for Broadcasting; Lee Jay Cho, acting president, East-West Center, Inc., and Stanley Silverman, Agency Budget Officer.

We will be delighted to go ahead and listen to your testimony on this, either in synopsis or you can submit it for the record in its entirety.

Mr. SHIRLEY. If it would make it easier, Mr. Chairman, I can simply summarize the budget request and submit my statement for the record.

Senator WEICKER. Fine.

[The statement follows:]

STATEMENT OF JOHN W. SHIRLEY

I am here to present the amended budget request for the U.S. International Communication Agency for Fiscal Year 1982. I appear before you as the Acting Director.

Mr. Charles Z. Wick has been designated by the President to direct the Agency. Once confirmed, he will be in a position to determine and present new policies and directions that may be undertaken by the new Administration. In the meantime, I am prepared to discuss the Agency's budget and its basic role and purpose.

The basic purpose of the Agency is to explain American policy and society to audiences overseas. We do this with the communication techniques at our command: the Voice of America, personal contacts, exchanges of persons, television, films, print media, exhibits and libraries.

Budget Request

Our amended fiscal year 1982 request totals $561,402,000, an increase of $69.4 million over the amount enacted and pending for 1981. Inflationary costs and other built-in increases account for $32.1 million of the change. The major component of increase is $79.5 million, primarily to construct new Voice of America relay facilities in Asia and Africa. These increases are partially offset by program reductions totaling $8.5 million implemented under the President's 1982 budget amendment and non-recurring costs of $33.7 million for the proposed 1981 Informational Media Guarantee Fund supplemental.

In 1981, we are reducing our staff by 498 positions, including 395 cut as part of the budget amendment, to a level of 8,158. We will maintain that level in 1982.

The amended request is $28.7 million lower than the amount originally requested for 1982. All of the staff cuts and some of the program changes are being initiated in 1981. These reductions will produce 1981 savings of $4,355,000, which will be applied to the 1981 pay supplementals.

Salaries and Expenses

The amended request for Salaries and Expenses is for $452,187,000 in the dollar account and $11,451,000 in foreign currency. A minor shift between these accounts, necessitated by a change in the availability of Egyptian pounds, is described later in my statement.

The request for the dollar account represents a net increase of $22,815,000 over the comparable enacted and pending 1981 level. Of the 1982 changes, $30,241,000 is necessary to meet foreign national employee wage increases; inflationary increases in rents and utilities, commercial power, diesel fuel, grantee costs and other contractual goods and services for Voice of America operations, overseas missions and exchange activities; cost increases in administrative support from the Department of State and other agencies; added needs for changes in Voice of America programming implemented in 1981, principally expanded broadcasts to Islamic audiences, the U.S.S.R., and the Caribbean and operation of four additional high-power transmitters at the Woofferton Relay Station; and all other built-in requirements including the full-year costs of new Foreign Service allowances and benefits implemented in 1981, and a decrease in prior-year balances available in 1982. Savings resulting from staff and program cuts implemented in 1981, including a decrease of 298 positions under the 1982 budget amendment, serve to reduce part of our added requirements.

The enumerated changes are requested to sustain throughout 1982 the reduced staff and program levels that will be in effect by the end of the current fiscal year. In addition, we are seeking $461,000 to open a branch post in Guangzhou, China, and to establish project staffs for the proposed augmentation of VOA transmitting facilities in Sri Lanka and Botswana.

The above requirements are partially offset by planned program reductions in 1982 totaling $7.9 million. The program reductions affect principally the Asia Foundation, the Georgetown University student project and other exchange programs, exhibits, television and films. In addition, there is a savings which is dependent upon the enactment of separate legislation. This is the repeal of the provisions of the Foreign Service Act of 1980 that entitled domestic foreign affairs specialist employees who serve only in the U.S. to receive the Foreign Service comparability pay increase, saving $2.7 million.

In addition to the program adjustments implemented under the 1982 amendment, the Agency plans to undertake other reprogramming actions in 1981 to meet new requirements that were not anticipated in the preparation of the Agency's 1981 budget. These changes which will be detailed soon in a reprogramming report to the Committee will enable the Agency to expand Voice of America broadcasts to Islamic audiences, to the U.S.S.R., and to the Caribbean; to implement new Foreign Service allowances and benefits authorized principally by the Foreign Service Act of 1980; to expand language training programs; and to increase several country programs and other activities. The funds needed for these changes will be derived mainly from the elimination of 89 positions in 1981 (in addition to the 298 cut in the budget amendment) and by other savings, principally resulting from the 1981 hiring freeze, closing the country programs in Chad and Afghanistan, and international exchange rate savings.

For our amended Special Foreign Currency appropriation, we are requesting $11,451,000 and 480 positions in 1982, a net increase of $848,000 over the comparable amount enacted in 1981. The added budget authority is requested to offset a decrease in prior-year balances available for application to programs in 1982 and to cover wage and price increases and other net built-in changes in the excess currency countries. In 1981, 111 positions were dropped, primarily as part of the budget amendment.

East-West Center

The amended appropriation request for the East-West Center is $16,880,000, an increase of $1,130,000 over the 1981 level. The net increase will provide $1,730,000 for Federal pay comparability and other built-in cost changes. This increase is partially offset by a program decrease of $600,000 in the Center's programs and in the number of participants as part of the 1982 budget amendment.

Acquisition and Construction of Radio Facilities

The budget request for Acquisition and Construction of Radio Facilities totals $80,884,000, an increase of $78,322,000 over the amount appropriated in 1981. Specifically, we propose to add six 250KW short-wave transmitters and associated antenna systems in Sri Lanka, where the VOA now has a small relay station, and to add four 250KW short-wave transmitters and associated antenna systems in Botswana, where a new VOA medium-wave station is nearing completion. These expanded facilities would complete the essentials of the 1977 facility augmentation plan.

A number of recent developments have caused us to adjust our plans for the expansion of VOA facilities in the Philippines and in Liberia. The revised plan, including the proposed new facilities in Sri Lanka and Botswana, will provide critically needed enhancement of the quality and strength of our signal in Soviet Central Asia, Western China, South Asia, the Horn of Africa, and Southern Africa; provide greater insurance that our broadcasts will get through regardless of changing political conditions through geographic diversification; and finally, the broadened system will enhance our program flexibility. For the first time in our history, we could accommodate increased broadcast hours and languages to adapt quickly to changing political conditions, without the necessity of taking time away from other language services. At the present time, we are at or near peak capacity on all of our existing facilities.

1981 Supplementals

The amended supplementals now pending in the Congress contain $10,372,000 to cover part of the added costs resulting from increases in Federal pay effected during the current fiscal year. In addition, a supplemental of $33,717,000 is requested to retire the debt and liquidate the accrued interest for the Informational Media Guarantee Fund.

Under the 1982 budget amendment, we have reduced our Foreign Service comparability and pay increase supplemental requests by $4,355,000 as a result of the elimination of 298 positions and other program adjustments implemented in 1981 under the budget amendment.

The House Appropriations Subcommittee recently recommended some changes in our 1981 supplemental proposals. We are reviewing those mark-up actions and will soon be prepared to provide you with our reactions.

Transfer of Foreign Currency Programs in Egypt to Dollar Funding

After the 1982 budget amendment had been completed, we learned that U.S.- owned Egyptian pounds will not be available for payment of newly incurred obligations for any USICA program costs in Egypt after the end of the current fiscal year. Agency programs costing $1,099,000 are now included in the Foreign Currency account. Accordingly, as the Committee considers our 1982 request, we ask that you provide for the funding of these programs and 56 foreign national positions in the dollar account. The new account totals are $453,286,000 in dollars and $10,352,000 in the foreign currency account.

Earlier Congressional Committee Actions

On March 24, we appeared before the House Committee on Foreign Affairs to discuss the bill to authorize appropriations for the Agency for fiscal years 1982 and 1983. The Committee completed its mark-up on April 2. The Senate Committee on Foreign Relations held authorization hearings on April 8. Our hearings before the House Committee on Appropriations took place on March 31.

Thank you, Mr. Chairman and Members of the Subcommittee. My colleagues and I will be happy to answer your questions.

BUDGET REQUEST

Mr. SHIRLEY. Our amended fiscal year 1982 request totals $561,402,000, which is an increase of $69.4 million over the amount enacted and pending for 1981.

Inflationary costs and other built-in increases account for $32.1 million of the change. The major component of the increase is $79.5 million, primarily to construct new Voice of America transmitters and related facilities in Asia and Africa. These increases are partially offset by program reductions totaling $8.5 million implemented under the President's 1982 budget amendment and nonrecurring costs of $33.7 million for the proposed 1981 informational media guarantee fund supplemental.

In 1981, we are reducing our staff by 498 positions, including 395 positions as part of the budget amendment, to a level of 8,158.

We will maintain that level in 1982.

The amended request is $28.7 million lower than the amount originally requested for 1982. All of the staff cuts and some of the program changes are being initiated in 1981. These reductions will produce 1981 savings of $4,355,000, which will be applied to the 1981 pay supplementals.

I will be happy to try to answer your questions, Mr. Chairman.

USICA EXCHANGE GRANTS TO FOREIGN STUDENTS

Senator WEICKER. The January budget requested $15,441,000 over fiscal year 1981 funding for educational and cultural exchange programs. This amount would have permitted a modest 9-percent increase in the number of persons involved in these exchanges.

Your amended budget request, on the other hand, provides increases sufficient to cover only inflation; in other words, no program increase is proposed.

Of the anticipated 5,707 grantees in fiscal year 1982, what percentage will be comprised of foreign students?

Mr. SHIRLEY. May I pass that question to my colleague, Mr. Gildner?

Mr. GILDNER. About 2,000 of those will be students and, of that, around 1,700 will be foreign students. The 300 would be Americans going in the other direction. Those are approximate figures and include a number of grant renewals.

Senator WEICKER. What priorities has the Agency established for distributing grants among foreign and American students, other individuals from the academic community, professionals and individuals in the arts?

What is the priority system?

Mr. GILDNER. Our program operates basically with Fulbright Binational Commissions abroad. A binational program means that each commission decides its essential priorities in various fields, as well as the mix of the program.

So in some countries, the main concentration could be on post-doctoral researchers, and in another country it might have some variation on that.

Basically, it breaks to about 4,000 Americans and foreigners traveling under the categories of research, teaching or lecturing.

Senator WEICKER. Is the Agency actively seeking support from other governments in order to increase the numbers of students participating in the academic exchange programs?

Mr. SHIRLEY. Yes, Mr. Chairman, in recent years, we have had some success.

In the past decade, the amount contributed by foreign governments has risen from approximately $2 million to almost $9 million. The bulk of those contributions come from the Federal Republic of Germany and Japan.

REDUCTION IN HUMPHREY FELLOWSHIP PROGRAM

Senator WEICKER. The budget also contemplates reductions in other student exchange programs, including the Humphrey fellowships and the university pilot program.

The Humphrey fellowship program provides graduate level training for midcareer professionals for Third World countries. I understand that the level of participation will be reduced from the 130 originally planned in 1981 to 100, and that further reductions are planned in 1982.

What is the level anticipated in 1982?

Mr. SHIRLEY. Ninety participants.

Senator WEICKER. What is the reason for this?

Mr. SHIRLEY. The reason for the reduction, Mr. Chairman, is a reduction in the amounts of money that will be available to us should we be granted our 1982 request.

Senator WEICKER. I can't think of anything more important than these types of programs, especially as it relates to the Third World. I want to know who is presenting this picture to the administration.

Mr. SHIRLEY. We made our case to OMB at the time we received our revised 1982 budget figures and a decision was made to restore some funds which had initially been cut. But we are in a situation where we simply have to take some cuts in order to live within the figures which have been apportioned to us.

Senator WEICKER. Except for the fact I think probably no area is more important than responding to a challenge presented to us in the world by those realities. I can't think of anything more important than this. I will tell you, that is where our opponents are putting their money, too. Anybody who takes a look at their arms budget, realizes that it is only one facet of the opponent's offense—believe me, only one facet of it.

Mr. SHIRLEY. We are in the process, Mr. Chairman, of briefing the Director-designate of the Agency, Mr. Charles Z. Wick. We have had an opportunity already to discuss with him in some detail the Fulbright budget and the general exchanges budget. I am sure he will wish to focus his attention on those as soon as he is confirmed.

ADVISORY COMMISSION ON PUBLIC DIPLOMACY REPORT

Senator WEICKER. Director, in a memorandum on April 8 of this year, the Advisory Commission on Public Diplomacy, which is charged with reporting to the Congress on the policy and programs of ICA, reported to the Senate Foreign Relations Committee that ICA, as a result of budget and personnel cuts, is hampered in performing its mission.

The Commission strongly criticized cuts which caused elimination of the regional television series, a 50 percent reduction in exhibits in Eastern Europe, and the reductions in exchange programs. About the latter, in other words, the exchange programs, the Commissioner said: "We cannot continue to neglect the role of ideas, information and attitudes in the defense of our interests."

Do you have any comments to make about the Commission's report?

Mr. SHIRLEY. I am not certain I know what you are reading from. I have seen the Commission's latest report. There is no doubt, Mr. Chairman, that the reduction——

Senator WEICKER. The quote I gave you came from the Advisory Commission.

Mr. SHIRLEY. I will be happy to comment on it. There is no denying that the reduction of almost $30 million that we have been asked to take is going to impact on the areas that you have just mentioned. The fact is that in years past, when our budget has been reduced, we have tended to take those reductions in the field.

We have tried to avoid that this year, to the extent possible in order to maintain our capabilities in the field where we think we do our best work. There is no question, though, that a reduction of funds available in the exchange area is going to reduce our capability to do the job we are asked to do, although our overall level in the exchanges area in fiscal year 1982, I think, will be approximately the same as the current fiscal year.

Senator WEICKER. Were you here, or did anybody make you aware of the dialog I had with Ambassador Kirkpatrick in hearings here?

Mr. SHIRLEY. No, sir.

TRAINING OF NAMIBIAN STUDENTS IN CUBA

Senator WEICKER. I want to repeat a story which I think best illustrates the point I am trying to make and get it out of the general into the specific.

About 9 months ago, I had occasion to visit the island of Cuba, and as a part of that visit, I visited what was called the Isle of Pines, now called the Isle of Youth. It has about 75 senior high school complexes; about 15 of the 75 are devoted to students of a particular foreign country. The one that I visited was comprised of 600 Namibians. Now we hear a lot of people running around here agonizing over the presence of Cuban troops in Ethiopia and Angola. I think that is rhetoric.

Quite frankly, I don't think it is a problem we are going to resolve. I think it is a problem Africa will resolve as it has resolved every foreign power in its continent. They will swallow it up. I think that is something in the final analysis that is not in our control.

CHALLENGE OF SOVIET EXCHANGE PROGRAMS

On the other hand if you ask me what the real danger is, here are 600 young people who are being educated courtesy of the Soviet Union and Cuba; I might add, all of whom speak the native tongue, they are all English-speaking, and yet there is no communication between this Nation and those young people, and they are going to go back to Namibia, Southwest Africa, and they are going to become the doctors, lawyers, judges, some of them heads of the military. At any rate, they are going back. There is the best weapon, I think, that the Soviet Union has going for them. This gets right to the point of what we are talking about, vis-a-vis these emerging nations, be they in Africa or be they on our back doorstep, and we are not, I repeat, we are not going to go ahead and influence the direction of the world through jumping in at the last half hour of the last act with an arms shipment. It is not going to happen that way. The bottom line here, any way we cut these figures, in the field, whatever expression you are using, the Humphrey thing alone, that is exactly the wrong direction. This is what I am trying to point out here, in terms of what the challenge consists of. I think it is far easier in the final analysis, it might be more expensive in some ways, but far easier to analyze your opponents' military hardware than to respond in a positive way in affecting people's minds, how they view the world around them, more particularly our system of politics.

What they are more concerned with is getting that ability in their own minds, great quality of life in their own country, kinsmen. It is substantially better than what they enjoy now.

I gave this example because someone will say that is a lot of airy, liberal talk. That is a lot of nonsense. I understand the value of military hardware, but I also understand this challenge is unique. It is the most dangerous challenge of all, and we are not responding to it. I go through the whole comments again when it comes to Central America, the Caribbean and South America. It is just as bad there. It almost reminds me of the time there was a day that the Federal Bureau of Investigation settled everything at the end of a machine gun. Not now. They have to rely on their laboratories, they have to rely on dealing with crime in a far different way than they did in the 1930s. Our response to what it is the Communists are doing, or indeed any totalitarian philosophy, has to be a damnsite more sophisticated.

IMPORTANCE OF EXCHANGE PROGRAMS

Mr. SHIRLEY. Mr. Chairman, I don't think anyone who has been professionally engaged in the business of public diplomacy for as long as most of the people on this side of the table, would disagree with what you have said about the importance of the exchange program. I'd like to point out a few things which are not generally known, and which perhaps will put a little bit of perspective on the whole situation, but without really challenging what you have said. The fact is that we have in this country at this time pretty close to 300,000 foreign students. They come from a wide, geographically dispersed area. It is true they tend to be more from rich countries or from those countries whose governments pay for their tuition, or pay their way here. These 300,000 foreign students represent quite an economic asset to us as well. Only about 2,000 of them are funded by the U.S. Government. The foreign student population in the United States is large and it is growing, and we contribute to its growth through the work that our posts do in advising foreigners who want to study in this country. That is over and above the direct exchange programs in which we are engaged.

At the same time, we estimate the student population in the Soviet Union at the moment stands at somewhere between 50,000 to 60,000. It is substantially lower than what you find here, although most students are in the Soviet Union at the expense of the Government of the U.S.S.R.

In terms of how we allocate our budget, the share that is spent on exchanges has grown somewhat in recent years. Since 1977, in fact, from 16 percent, we are now spending 19 percent of our budget in the exchanges area.

Senator WEICKER. What I am saying basically is that I think the funding, even staying the same level, ought to be clearly upped in this area. How many Namibian students do we have here?

Mr. SHIRLEY. I wouldn't venture a guess. The principle you are trying to establish——

Senator WEICKER. I will tell you what I am establishing here. We are going to forfeit this one to the Soviet Union is what we are going to do.

Mr. SHIRLEY. I am informed there were two exchanges with Namibia, at the expense of the U.S. Government.

Senator WEICKER. At the expense of the U.S. Government, two. And I just saw one school. I don't know how many Namibians are in the Soviet Union. The Soviet Union is not successful in the way they handle their students. I am not setting that up as an example, but you have the complex in Cuba, they brought over their whole teaching staff with the exception of 3, 4, or 5 advisers. Basically the teaching staff, the drafts, the circs of their cultural affairs, everything else is not Cuban, it is Namibian.

NUMBER OF SALVADORAN EXCHANGE STUDENTS

I am sure there are other situations where we are not completely comfortable with the host government, so we don't get into this exchange program business, as you say. I am not worried about the French, Germans, English, Italians, everybody else like that. I think those ties are pretty strong. I think the southern area is just absolutely crucial. I wonder, how many Salvadorans do we have over here?

Mr. SHIRLEY. Seven.

Senator WEICKER. And yet we are going to spend millions, as far as our advisers, and whatever arms we are sending. I just want you to know, I am not arguing with you because I think we are both on the same wave length. I do want to use the occasion to stress where I feel the emphasis has to come in, in the final analysis. I am sure we can pick up a lot of other nations on our back doorstep, in Africa, and around the world. It seems to me we should be able to open our programs to try to include them. Sometimes it works the other way.

On the same visit to Cuba, I was met by the Assistant Education Minister, Deputy Fernandez? We managed to talk in a taxicab ride to my hotel. I asked him when he had spent some time in the United States. He said it was in 1953. I said, "Where?" He said, "Fort Sill, Okla." I said, "I graduated from Yale in 1953, and I was at Fort Sill, Okla." He got a good edúcation at Fort Sill, Okla. He was also the Commanding Officer that beat back the Bay of Pigs invasion. So sometimes our education works the other way.

In any event, I intend, during our budget review, to take a look at this item, and at any other items you think might relate to the Humphrey fellowship. I am sure there are other programs within your total budget that relate to this general area I am discussing. I would appreciate those, without going into a lot of detail now, please pinpoint it for me so when the subcommittee meets, so we will have an opportunity to take a look at it to see if that is something we would want to examine.

Mr. SHIRLEY. Very good, sir.

REDUCTION OF LATIN AMERICAN BINATIONAL CENTERS

Senator WEICKER. I understand on the Latin American Binational Centers, we are reducing that by 17 positions, ICA officers in Latin America. Is that correct?

Mr. SHIRLEY. Under the budget amendment we eliminated 15 American positions in the American Republics' countries in 1981. Two of the 15 were officers assigned to binational centers.

Senator WEICKER. Where are these centers?

Mr. SHIRLEY. The positions being abolished are in Barranquilla, Colombia, and Guayaquil, Ecuador. We will continue contacts and programing with these centers, but given present budgetary constraints, we cannot justify the cost of maintaining an American officer in these locations. We will, however, continue to maintain American officers at binational centers in 11 other locations in the American republic area.

Senator WEICKER. What is their function?

Mr. SHIRLEY. The binational centers are used for teaching English and very often include a library and a projection room where films can be shown or where lectures are held. I might add those centers are not being closed. It is simply our relationship with them that is changing. There are many binational centers around the world to which we contribute only minimally. It might be books for the library, we might give them films or supply lecturers, but the basic funding for the binational centers are derived from the profits of the English-teaching programs which they organize.

CONSTRUCTION OF NEW VOA RELAY STATION IN SRI LANKA

Senator WEICKER. A total of $80.9 million is requested for construction of radio facilities. Of this amount, $64.5 million is for a new relay station in Sri Lanka, where you now have a small station.

Does Voice of America share the use of any of its facilities with Radio Free Europe or Radio Liberty?

Mr. SHIRLEY. It is correct, Mr. Chairman, that a substantial portion of the additional amount requested for radio construction is for six 250-kW transmitters in Sri Lanka. We have, in fact, an agreement with the Government of Sri Lanka for that project.

We do not share any facilities either with Radio Free Europe or with Radio Liberty for the good reason that we have no free transmitter time.

Senator WEICKER. Why was Sri Lanka chosen as the spot for an expansion of facilities?

Mr. SHIRLEY. It might be useful since this whole matter is rather important to the future of the Voice if I can ask Mr. Haratunian to explain.

Mr. HARATUNIAN. May I go up to the map, sir?

At the present time, we have a very small station in Sri Lanka. It consists of several 35 kW transmitters. I think there are three. There is also one 10 kW transmitter. These are four very small transmitters that do not cover any area beyond this area of South Asia. The largest facility that we have in Asia is the Philippines, and in Africa it is in Liberia. Building a large station in Sri Lanka will permit us to cover areas of the world where at the moment we are just simply not competitive. Sri Lanka geographically permits us to put a competitive signal into Western China, into the Eastern areas of the Soviet Union and into the Persian Gulf area.

It will also permit us to cover the east coast of Africa. This results from a geographic advantage—Sri Lanka is in an ideal geographic position from which VOA's competitiveness will be enhanced.

INCREASED MILITARY PRESENCE

Senator WEICKER. Does the construction of this facility and the operation of the facility have any relationship to our increased military presence in this area of the world, specifically the Persian Gulf?

Mr. HARATUNIAN. It was not chosen because of any single political factor. It was chosen on the basis of a geographic advantage—radio propagation conditions permit us to carry a signal over a greater distance because it travels over water.

As a consequence, it provides good coverage of east Africa, for example, which we would not have had if that site had not been available to us.

Senator WEICKER. I gather this is going to give you a far stronger signal?

Mr. HARATUNIAN. Yes.

Senator WEICKER. I suppose what I am driving at, so we put it on the table, is that I don't mind you coming here with your budget for what you are trying to accomplish. But I am wondering if this is coordinated with military expenditure.

Mr. SHIRLEY. No, Mr. Chairman, there is no link between those two.

NEW VOA FACILITY IN BOTSWANA

Senator WEICKER. You are also undertaking a $29.6 million project to augment the new facility in Botswana. Have discussions with the government in Botswana been completed?

Mr. HARATUNIAN. No, sir, they are not completed yet. We are in the midst of discussions with them. Proposals have been submitted to them and they are under consideration.

Senator WEICKER. Where would this facility be?

Mr. SHIRLEY. Near Gaborone.

Mr. HARATUNIAN. Right here, sir. Our present station in Africa is in Monrovia, Liberia. Botswana is situated in southern Africa. We already have an agreement with the Government of Botswana for a medium wave broadcasting system which would give us coverage in areas of South Africa.

Senator WEICKER. What are you going to tell the South Africans?

Mr. HARATUNIAN. The Voice of America is a reflection of our society and provides news about the United States and the world. What this project does is to provide us a signal that can be heard competitively. Following an agreement in Botswana for a medium wave capability, we are seeking agreement from them to establish a shortwave capability as well. The Government of Botswana is willing and engaged right now in discussions with us to do that. With that facility, between Colombo and Botswana, we can cover the entire east African area to which we do not have a competitive signal at the moment.

REPROGRAMING OF FUNDS FOR BOTSWANA PROJECT

Senator WEICKER. Of the $29.6 million cost of this project, $14.5 million is requested in new budget authority. The remaining $15.1 million is to be reprogramed. From what sources do you intend to reprogram funds?

Mr. SILVERMAN. Mr. Chairman, the basic reprograming source is a change in the manner in which we were going to spend money on the Liberian relay station, for which money was appropriated in 1979, and in the Philippines. Initially in the 1977 report of the President on radio facilities, we recommended, and Congress appropriated, funds to add four transmitters in Liberia and four in the Philippines.

Since that time, we have been able to get a better geographic and technical distribution of those facilities. Therefore, we are planning, and will send you a letter to reprogram some funds from Liberia and the Philippines to Botswana and Sri Lanka, and to use the transmitters somewhat differently. We will put no new transmitters in Liberia. We will put two in the Philippines, instead of four.

We will put four into Botswana and six into Sri Lanka and thus give us a much better technical dispersion of signals around the world and a better political—geographic spread, that is not dependent on so few locations for our facilities.

VOA BROADCASTS TO LATIN AMERICA

Senator WEICKER. On your map there, while you have it up, what do we have that broadcasts into Central America, Caribbean, South America?

Mr. HARATUNIAN. For our broadcasts to Central America, the Caribbean, and South America, we use transmitters from Greenville, N.C., where we have a very large shortwave capability. This is the picture of current capability. It does cover a good section of Latin America, with some problems reaching areas on the west coast.

We also cover Cuba by medium wave from Marathon Key in Florida. In addition, we have an arrangement with the Government of Antigua to place a 50 kW medium wave station there for the coverage of the eastern section of the Caribbean Islands for English broadcasting. We are at the moment looking for another site from which we can cover by medium wave the western part of the Caribbean, Jamaica, et cetera.

Senator WEICKER. You know, in all the years I have been down there, I have never heard the Voice of America. I have heard BBC.

Mr. HARATUNIAN. BBC has a very large station on the island of Antigua. VOA broadcasts to the Caribbean and Latin America in terms of air time have not been as full as BBC's have been.

Mr. SHIRLEY. I might say, Mr. Chairman, the medium wave transmitter from Marathon which beams our programs into Cuba is on 5 hours a day and we understand the signal is so powerful that it can quite literally be picked up on car radios. There are also 900 radio stations in South America which use VOA programs. Some of them take them off the air and rebroadcast them so that the coverage, particularly once this Antigua facility is operating, has improved quite dramatically in recent years.

PERSONNEL IN LATIN AMERICA

Senator WEICKER. How many of your personnel do you actually have in Central America, the Caribbean, and South America?

Mr. SHIRLEY. I will have to get that for you.

Mr. SILVERMAN. Mr. Chairman, I can give it to you by country. At present we have two Americans stationed in Barbados, three in Costa Rica, one in Cuba, three in the Dominican Republic, two in El Salvador.

Senator WEICKER. Is this part of the interests section in Cuba?

Mr. SHIRLEY. Yes.

Mr. SILVERMAN. Four in Guatemala, two in Haiti, two in Honduras, two in Jamaica, two in Nicaragua, four in Panama. That takes care of Central America.

Senator WEICKER. What do these people do?

Mr. SHIRLEY. There are enormous differences between what our posts do. Essentially, through personal contacts, they attempt to stay in touch with those people in those societies who form public opinion, and try to convey to those people what our views are on issues which are of mutual interest. They conduct programs which will include lectures and seminars and film showings. They place television programs on local television stations, identify participants for the exchange programs, and work with local organizations on exchanges. The public affairs officer provides public affairs advice to the ambassador and to other members of the mission. Our public affairs officers are the spokesmen for our Embassies.

In El Salvador, at the moment, the officer at the Embassy charged with maintaining contact with the local and American press is the ICA Public Affairs Officer. They oversee the activities of binational centers in many cases, and supervise teaching programs in these countries.

Senator WEICKER. How many of these personnel—I realize you don't have this in your fact sheet here—have a background of the nations they serve? In other words, do we have any input either as to where we broadcast out of Greenville, Marathon, personnel stationed down there, what background do they have to be there?

Mr. SHIRLEY. Actually, in our Latin American program, our record on language-qualified officers may be the best of any area. I would be surprised if we had any officers in key positions who are not fluent in Spanish or in Portuguese.

Senator **Weicker**. I don't think it is a matter of familiarity——

Mr. **Shirley**. Well, familiarity with the culture, certainly. There, too, I think you will find the record is good because people tend to return to those areas of the world in which they have an interest and about which they know a great deal. After two or three tours of duty in Latin America, they have developed quite a background in the area. Mr. Haratunian wants to address this question, also, from the VOA perspective.

Mr. **Haratunian**. You mentioned Greenville and Marathon earlier. Those are simply relay stations. They are places from which a radio signal emanating from Washington is transmitted. They have no program role at all. For the Voice of America, there are 54 people in Washington employed and broadcasting to Latin America and the Caribbean. These are linguists who broadcast in Portuguese, Spanish, and English; they are usually recruited from the area.

CONTENT OF VCA BROADCASTS

Senator **Weicker**. Who decides on the content, though, as to what is important in the sense of the broadcast? What are we doing in these broadcasts? Are we merely telling them about what is going on in the United States, involved in the events that are going on in these other nations? How is content matter determined?

VOA CHARTER

Mr. **Haratunian**. The Voice of America operates on the basis of its charter, which has been made part of the law. The charter is a three-part document. It says the Voice of America must be a comprehensive, accurate and responsible source of news. So Voice of America's first and most important mission is to be a news service, and this news service operates for overseas listeners. Therefore, it chooses news items and organizes its news coverage and news reporting so that there is relevance to overseas listeners. When broadcasting to Latin America, news which is most relevant to Latin America is stressed.

The second mission of the Voice of America is to be an accurate reflection of American society, to the extent we can reflect the pluralistic nature of American society.

We have people in the United States who are bilingual, the products of two cultures, and have special interests in the parts of the world to which we broadcast. We do include coverage of the activities of these ethnic communities in our broadcasts. We cover what is happening in the United States. We cover what is happening around the world.

Our third mission is to be the explainer of American foreign policy and, as such, we have program vehicles, commentaries, through which policies that are articulated by the administration are then supported on the Voice of America. It is from this mix of programs which every language service, and there are 39 of them at present, choose their programs.

Senator **Weicker**. I suppose what worries me, to get back to Latin America, is whether or not we are telling the story that really makes sense to the listener. When I talked to those Namibian students, my

God, their ideas of the United States were unbelievable, and I had no difficulty communicating. They thought we backed the South Africans in the apartheid policy. I was wondering whether we are telling them things that are being sensitive to other people's foreign policy or we are letting the world know what it is this Nation as a whole is interested in, if we are telling that story very effectively. I have no doubt, specifically exclude Eastern Europe, Western Europe, all that area there, I just wonder how effective we are in these areas that are really the tough part of your mission.

Mr. HARATUNIAN. Senator, we have three correspondents stationed in Africa, we have three correspondents that cover Latin America and the Caribbean. We try to be as relevant as we can, in terms of communicating to those audiences in those two continents. We broadcast that which is of interest to them and of interest to us, where our interests coincide. We hope to be a window through which people will get an accurate view of what the United States is, what its purposes are, what its policies may be, and perhaps most important of all, what is going on in the world as seen through this broadcaster who is broadcasting from the United States.

One measure of effectiveness is the number of listeners one has in comparison to others who are also broadcasting to the same audiences, and I can say that in Latin America and in Africa, particularly in Africa, the Voice of America has the highest listenership among those who listen to international broadcasting, higher than BBC, certainly higher than any other broadcasting coming from either Havana or Moscow. It doesn't mean that everybody listens; certainly not. Does it mean we influence all people, or if you were to meet that same Namibian would he give you a different picture of the United States? I doubt it.

ALLOCATION OF USICA RESOURCES

Senator WEICKER. If you had to split up your operation allocation of resources, what do you allocate to Europe, what do you allocate to Africa and what do you allocate to the Southern, Western Hemisphere?

Mr. SHIRLEY. We are looking for those statistics Mr. Chairman. But I am sure you have talked to more persons in the Caribbean than the Namibian students that you mentioned.

Senator WEICKER. Sure. Diving is my hobby. I spend a great deal of time in the Caribbean. I must confess, I don't see anybody wildly enthusiastic about the United States. The same holds true with Central America, with the exception of a few countries of South America. I am not laying this on your doorstep. But I think there is considerable difference in what it is. you are doing in Eastern Europe where, quite frankly, I am glad they have a window on the United States and the world; that is important. I don't think it is going to effect the course of conduct in those nations. To the extent it is going to affect what goes on in our area of the world and Africa, that is an entirely different proposition. If I were going to allocate resources, I think I would like to see a preference shown in those areas. That is why I was asking for your comments here.

Mr. SILVERMAN. Mr. Chairman, if I may, in terms of the Voice of America's effort, I can give you the breakdown of how many hours per week we address each major area of the world.

Senator WEICKER. That will be good.

Mr. SILVERMAN. In 1982 when all the languages now being increased have reached their full schedule, we will have 267¾ hours to Eastern Europe and the Soviet Union; 17½ hours to Western Europe: that would be Greece, Portugal, and Turkey.

Senator WEICKER. How many do you have in Eastern Europe?

Mr. SILVERMAN. 267¾ hours, Mr. Chairman; 107 hours per week to Africa; 129½ hours a week to the Near East, North Africa and South Asia; 171½ hours per week to East Asia and the Pacific, 52½ hours to the American Republics. Those are exclusive of English, which, of course, goes worldwide. Those are the 40 vernacular languages we will be on the air in, and 183½ hours a week in English, which, of course, is heard worldwide; 929 hours and 15 minutes will be the weekly origination schedule, with some repeats in certain areas.

Senator WEICKER. That is pretty good. It tells a story, certainly. At least in one aspect of my comments or guess work, the low end of the totem pole is right in our backyard.

Mr. HARATUNIAN. Senator, there is one factor I would like to bring to your attention. When you broadcast to Eastern Europe, you are broadcasting in multiple languages. There are many more languages spoken there than in Latin America. Therefore, if you want to address people in those European languages the number of broadcast hours accumulate, it kind of distorts the numbers of people to whom you broadcast. To Latin America, on the other hand, we broadcast in only three languages—Spanish, Portuguese and English—and therefore the number of hours of broadcast is far fewer.

Therefore, when you are dealing with one block of evening broadcasting time to Latin America, unless you compete with yourself by broadcasting on two different networks, there is a limit beyond which it is not reasonable to go. In Eastern Europe, we are dealing with many more broadcast hours because we broadcast in many languages.

IMPORTANCE OF LATIN AMERICA TO UNITED STATES

Senator WEICKER. Obviously I am not in a position to understand all the technicalities, how these figures are compiled, but I think it is fair to say there is something less dramatic, I suppose, about broadcasting to the south of us here, but I have to repeat, I think the importance is even more important to the future of this Nation than Eastern Europe. I think the effect that you can have on the future is far greater right at our back door.

Mr. SHIRLEY. I think you will find that we are already beginning to adjust our activities to the priority which you suggested we ought to have. I am not saying it is an absolute priority, but we certainly have increased our activities in this area.

Senator WEICKER. I am not saying it is absolute.

Mr. SHIRLEY. As a matter of fact, we are also seeking additional facilities to broadcast to the Caribbean so there is a shift of emphasis toward the Caribbean Basin and Latin America, particularly in broadcasting and in other programs. I think we opened up as many posts in the Caribbean area in the past 5 years as in any other part of the world.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I think we'd better. I think it is interesting to say, it is not exactly sympathetic to the United States. These various nations we neglected for so long are finding friends among our friends. I really mean it, I think in terms of allocation of resources it is something that should be emphasized, although not to the total exclusion of everything else. Regardless of how those figures are compiled, there still seems to me an imbalance in terms of treatment given to the Western Hemisphere. I have other questions that I will submit for response to the record. Is there anything I did not cover that you care to raise at this time?

Mr. SHIRLEY. Thank you, Mr. Chairman. I have enjoyed answering your questions, and we appreciate the opportunity to appear before you.

Senator WEICKER. Thank you.

[The following questions were not asked at the hearing but were submitted to the Agency for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WEICKER

INFORMATIONAL MEDIA GUARANTEE FUND SUPPLEMENTAL

QUESTION:

The Agency is requesting a supplemental of $33.7 million to retire the debt of the Informational Media Guarantee Fund. Of this amount, nearly $12 million represents interest payments — the remainder is repayment of principal. Is any of this debt held by individuals or is it all owed to the Treasury? Why is the Agency seeking to repay the debt and accumulated interest at this time?

ANSWER:

From 1956 to 1966, the Agency operated the Informational Media Guarantee Fund (IMG), which provided to U. S. firms guarantees of convertibility of currencies earned in the export of U.S. books, periodicals, films, and other informational media. The program, which paid out $83.3 million for currency transactions in 21 countries, was funded primarily by the issuance of U.S. Treasury Notes. Appropriations were required to pay interest on the notes and to restore in part the losses suffered in the conversion of currencies. Congressional action in connection with the Agency's 1967 appropriation called for cessation of such guarantees, and no new guarantees have been initiated since then.

The Agency strongly favors efforts to expand worldwide the availability of U.S. commercial informational media. At various times during the past dozen years, interest has been expressed within the Agency and outside the Agency in reviving the program. However, we have now concluded that we will not reactivate the cumbersome IMG Program. The Agency's Audit Staff recently reviewed this program and recommended that the Agency take action to liquidate the financial liabilities of the program. The Office of Management and Budget is also interested in closing out this inactive account to save the costs associated with maintaining accounts for it. For these reasons, we are now requesting a 1981 supplemental to liquidate all financial liabilities associated with the operation of the program prior to 1967. This consists of U.S. Treasury Notes Payable totaling $21,767,069 and interest accrued thereon of $11,950,354. These notes are held by the U.S. Treasury Department.

When effected, this transaction will not result in any net outlay of funds from the U.S. Treasury as the outlay in USICA's books would be offset as a receipt on the Treasury Department's books. If the funds are not appropriated at this time, or if other action to cancel the indebtedness is not taken, interest will continue to accrue at an annual rate of $700,000 until the notes mature on June 30, 1986 and June 30, 1989. At that time, action would be required to liquidate the notes payable and the associated accrued interest payable.

PROPOSED LANGUAGE CHANGE FOR 20-YEAR VOA LEASES

QUESTION:

You are requesting a language change to allow for leases of up to 20 years in Africa, Europe and Asia. You indicate that VOA is negotiating an agreement for expansion for two transmitters sites and a renewal of a third. Where are these sites located?

ANSWER:

The sites in question are located in Greece, Sri Lanka, and Botswana. The previous agreement with the Government of Greece for the operation of Voice of America transmitting facilities at Kavala and Rhodes expired in December, 1977. Since that time the facilities have been operated under a letter of extension. We are currently negotiating a new long-term agreement with the Greek Government. In addition, we propose to expand the current VOA relay stations in Colombo, Sri Lanka, and in Botswana where a new medium-wave relay station is nearing completion. Recent negotiations in Botswana have raised the possibility of a 25 year term, and we would appreciate a change in the pending language to permit that possibility. The Agency has requested new budget authority in fiscal year 1982 totaling $79.0 million to augment the Sri Lanka and Botswana facilities.

F.S. COMPARABILITY PAY INCREASE FOR DOMESTIC EMPLOYEES

QUESTION:

The budget anticipates repeal of a provision in the Foreign Service Act of 1980 that entitled domestic employees to receive the Foreign Service comparability pay increase. Have these individuals already received the pay adjustments? What is the total amount of the savings? Has legislation been submitted to Congress?

ANSWER:

The termination of the added salary payments to domestic specialists would save $2.7 million. These new payments were implemented on October 5, 1980 in accordance with Chapter 1, Title II of the Foreign Service Act of 1980 (P.L. 96-965). The proposed legislation needed to effect this change is currently being drafted by the Administration.

The Foreign Service Act of 1980 was enacted, inter alia, to establish pay comparability for the Foreign Service. This amendment is designed to eliminate an inequity that was created by the Foreign Service Act of 1980. At present, the Act provides that the domestic foreign affairs specialists (FAS), notwithstanding the fact that they will no longer be considered a part of the Foreign Service and that they are and will continue to perform domestic work -- not overseas -- will receive the higher pay granted to members of the Foreign Service. As a result, domestic FAS employees are receiving, on average, 11 percent higher pay than Civil Service employees performing similar work.

The purpose of establishing higher pay for members of the Foreign Service was to provide sufficient financial incentives to attract and retain the best qualified personnel and to provide them with adequate compensation for the many hardships, disruptions, and other unusual conditions of service abroad that a member of the Foreign Service and his/her family must endure. The proposed amendment to the Act would rectify the pay disparity among domestic employees while preserving this important financial incentive for the members of the Foreign Service who must be available for service anywhere in the world.

STATUS OF BETHANY RELAY STATION

QUESTION:

I noted that the January budget anticipated savings from placing the Bethany, Ohio relay station in caretaker status with the completion of the Tangier circuit of the Europe/Africa satellite this spring. Why have you changed plans to close this station?

ANSWER:

The Bethany station provides an important feeder service to our African stations as well as a short-wave signal direct to our listeners in Africa. In the January budget, we anticipated that the projected completion this year of the satellite feed circuits to our Tangier and Liberia stations would permit us to close the Bethany station. However, completion of the circuits have been delayed and we must continue operations at Bethany at least until the satellite circuits have become fully operational. Further, in the face of political uncertainties in many parts of the world and projected changes and additions to VOA's overseas stations, we are reevaluating the importance and need for U. S. relay stations as alternative direct broadcast and feeder stations in the event of loss of overseas stations or circuits.

INCREASE IN STANDARD LEVEL USER CHARGES

QUESTION:

Since 1980 the amount paid to GSA in Standard Level User Charges has gone from $8.8 million to $12.6 million, an increase of 43 percent. What is the reason for this increase, and have you questioned it?

ANSWER:

There are two principal reasons for the increase in Standard Level User Charges paid to GSA since 1980. They are: higher costs for rent ($2.7 million) and increased utility costs ($1 million).

GSA is currently operating on a three-year fixed rental charge for each building occupied. When this rate expires (approximately 1/3 of our buildings' rates change each year), a very substantial increase occurs which represents a catch-up for inflation during the preceding years. Based on this policy, our headquarters complex alone (1750 and 1776 Pennsylvania Ave.) accounted for $1.4 of the total $2.7 million increase without adding one square foot in space holdings.

Higher utility costs are principally related to the extra hours of operation for the Voice of America. The standard user charge provided for only a normal five-day week office operation. The VOA, working on a 24-hour schedule, requires additional utility services which equate to higher payments. We have experienced a $0.7 million dollar increase in these services since 1980.

We do analyze the charges for Standard Level User services and have questioned GSA in the past regarding rates charged for specific categories of space. In addition, we have reviewed and questioned GSA's method of computing extra utility costs. In both instances we have had some success in reducing costs.

GSA SPACE STUDY

QUESTION:

What was the $65,000 GSA space study conducted last year for the Agency?

ANSWER:

For some years, the Agency has been attempting to reduce the number of buildings occupied in the Washington, D.C. area (presently holding space in 16 locations) through consolidation into one or two locations. GSA has advised that our request is a part of their overall five-year space projection for the National Capital Region. The $65,000 represents funds for a master space study of our office and specialized space needs which will be conducted during FY-81.

INFORMATION PLACEMENT

QUESTION:

Through its overseas missions, the Agency spends hundreds of thousands of dollars in "information placement". In what specific ways does information provided by ICA reach foreign nationals? Do we buy time on commerical radio and television? Is it distributed through the mails? Please provide details on how this money is spent.

ANSWER:

USICA posts provide information to foreign nationals in a number of ways:

Wireless File -- This five-day-a-week compendium of important texts, statements, news conferences, editorial reactions, etc., is delivered to the editors of electronic and print media in virtually all countries in which we operate. News releases drawn from the file are sent to a wide range of audiences, depending upon the subject. Selected items are sent to particular individuals in the foreign ministries, treasury departments, central banks and other foreign national institutions. Official texts are reproduced and similarly given wide distribution through mailings to the post audience lists. Material selected from this file is also used to prepare briefing kits on certain aspects of U.S. policy for dissemination to participants in our lecture programs.

Magazines -- These publications, together with pamphlets on particular subjects, are distributed to selected foreign nationals to a large degree through the host countries' mailing systems, although many posts also use courier systems for Agency printed products.

"Information Placement" is the total cost of these distributive processes -- mailings, reception and dissemination of the wireless file, reproduction, travel to effect placement of our materials in the media or in a variety of foreign institutions. This category of funds is not used to "buy" time on commerical radio and television, or space in the print medium.

USICA PRODUCTION OF TV AND FILM SPECIALS

QUESTION:

ICA will spend a total of about $8.7 million on television and film service programs. This includes $5.0 million for personnel support. To what extent does the Agency actually produce its own television and film specials?

ANSWER:

The $8.7 million figure is the projected FY 82 budget. In FY 80 we produced 127 programs and acquired 253. So far this year our percentages are about the same: 67% acquired, 33% produced. However, our staff and facilities were also used in that same period to produce 72 special events coverages and facilitative programs for foreign TV networks. Therefore, the actual quantitative comparison is roughly 55% acquired to 45% produced.

FILM SERIES VERSUS FILM SPECIALS PROGRAMS

QUESTION:

The film series program is being eliminated — can you tell me how this differed from the specials program?

ANSWER:

Any ICA television series, produced either on film or videotape, is designed to provide a number of programs under the same title, of the same length and production format and usually with a specific talent acting as host. The programs are often grouped in blocks of 12, for monthly placement, or 13 for weekly placement in a given quarter. Posts and TV stations know in advance that a given number of programs will be available. On the other hand, specials are individually budgeted, formated and distributed, and many ICA specials are primarily designed for closed circuit rather than broadcast TV use.

REGIONALIZED TELEVISION SERIES

QUESTION:

Also affected by the reductions in the January proposed budget is the Agency's ability to produce a regionalized television series for use in Latin America, the Near East and Africa. Could you please explain what these regionalized television series are?

ANSWER:

The proposed series for Africa had actually not progressed beyond the production and distribution of a pilot. Called "American Images", it was designed to show contemporary life and values in the U. S. through brief video portraits of interesting but average citizens. "Toward a Better Life," produced for the Middle East with a well-known Arabic-speaking host, was designed to show the common interests and shared values of the U. S. and the Arab world. Thirteen 1/2 hour programs were released at the end of FY 80 and are currently on TV in most Arabic nations. The Spanish language series "Ahora" has provided more than 90 1/2 hour programs to Latin America in groups of 13 per year. The series has been placed in every country in Latin America and many programs have been repeated several times on TV. All these products are also used by our posts in these areas in direct projection programs to invited audiences even though their primary purpose is television placement.

Although Ahora achieved a good placement record, it was decided early this fiscal year that the Agency's program needs could be more effectively met by a multi-regional TV series with separate editions targetted for Latin America, Africa, and the Middle East. This decision became moot, however, when the size of the Agency's reduction under the FY 1982 amendment made it clear that production of all TV series would have to be eliminated. We expect Spanish-language versions of other Agency video products to adequately meet our television programming needs in Latin America.

SOLO EXHIBITIONS IN EASTERN EUROPE

QUESTION:

$1,537,000 is budgeted for special exhibitions — of which, $910,000 is for solo exhibitions in Eastern Europe. What specific activities will this money fund?

ANSWER:

A new cultural exchange exhibition, tentatively titled "Creativity in the Marketplace," is being researched, designed, and produced for an initial showing in Yugoslavia.

A 6,000 square foot exhibition on the theme of "The American Museum - An Experience in Community" will be shown in Poland for $175,000 and in Bulgaria for $185,000. The Bulgaria showing is part of a bilateral cultural exchange.

Fine Arts Exhibitions, including one of American impressionists, will be shown in at least two Eastern European countries during the fiscal year.

During late FY 1982 we will start research and development of preliminary designs for an exhibition which will be produced and shown in Eastern Europe during the following year. A theme has not yet been identified.

Summary

Creativity in the Marketplace	$350,000
The American Museum	360,000
Fine Arts Exhibitions	120,000
Preparatory Costs for new exhibit	80,000
TOTAL	910,000

ELIMINATION OF LABOR MISSIONS PROGRAM

QUESTION:

In part of the recent economy move, the Agency has eliminated that portion of its exhibits program which would finance the participation of American labor representatives. Do you believe it is wise to entirely eliminate this activity -- particularly in Eastern Europe?

ANSWER:

Labor Missions have not accompanied exhibitions to Eastern Europe for approximately five years. While the Department of Labor had proposed sending missions to some East European countries in FY 1982, USICA does not expect to emphasize such exhibit programs until the climate for open communications on this very sensitive subject promises more success than is now the case. The Agency continues to have labor programming capability under its American participants and IV grantee programs to address opportunities for programming in Eastern Europe and elsewhere.

EFFECTS OF CUTS IN PERFORMING AND FINE ARTS

QUESTION:

The Agency's budget for sponsoring performing arts programs and fine arts exhibits has decreased from $2.8 million in 1980 to $2.3 million in fiscal year 1982. Given the constant increase in travel and shipping costs, what effect will this reduction have on the number of programs and exhibits you are actually able to sponsor?

ANSWER:

The reduction in the Agency's budget for the performing and fine arts plus the effect of rising travel and shipping costs will not reduce the number of programs. However, to reduce our overall costs to meet reduced budget figures, we intend to shorten the itineraries for a number of fine arts programs and selected performing arts programs.

RESEARCH STUDIES

QUESTION:

An increase of $38,700 is budgeted for research studies -- bringing the total fiscal year 1982 request to $565,963. What types of research activity are conducted by the Agency and what specific projects are contemplated in fiscal year 1982? Please provide a list for the record.

ANSWER:

The research program has two main objectives: (a) to support the Agency's mandated role as an advisor in foreign policy deliberations -- especially as to the impact of actual and proposed U.S. foreign policy decisions on public opinion abroad and (b) to provide direct insights into the communication process in which the Agency is engaged.

The main method for carrying out these objectives is through the use of polls when available. Poll results are obtained from various sources, or USICA conducts its own surveys on a contract basis when no relevant existing data are available. The Agency augments its findings by analysis of information from other sources.

While survey research is the prime modus operandi, the research techniques used do vary in certain special situations. For example, opinion in closed societies, where normal surveying is not possible, must be measured through other techniques such as expert observer panels, surrogate reporters, or content analyses. Or if our concern is not the general public of a country, but some selected sector, special "elite interviews" and/or other survey techniques are employed.

It is difficult to identify what projects will actually be undertaken in FY-82, because of changing circumstances. However, a tentative list is provided for the record:

Summary of FY-82 Planned Research Studies

A. Policy Advice Research

	Study Title	Amount
1.	Multi-area Survey on Energy Issues	$130,000
2.	Chinese Perceptions of the U.S.	35,963
3.	Survey on International Issues and U.S. Role in East Africa	35,000
4.	Multi-Country European Rider Surveys on Important Foreign Policy Issues	95,000
5.	Latin American Opinion Surveys	40,000
6.	Economic Summit Survey	58,000
	Sub-total	$393,963

B. Communication Advice Research

	Study Title	Amount
1.	Italian Communication Study	$ 45,000
2.	Study of Soviet Publications	12,000
3.	Study of Information Sources on the U.S. in the USSR	20,000
4.	VOA Listenership Study (site undetermined)	40,000
5.	Study of Exchange Programs	30,000
6.	Purchase of Media Habits Survey Data	15,000
7.	Analysis of Radio Survey Data	10,000
	Sub-total	172,000
	Total	565,963

INFORMATION SYSTEMS IMPROVEMENTS

QUESTION:

The budget requests an additional $1,761,845 for information systems improvements. Please provide specific information for the record of the planned uses of these funds. Include details on the number of new units of equipment.

ANSWER:

The additional $1,761,845 for information systems improvements in the 1982 budget request will be used for the following purposes:

A. Overseas Communication (Wireless File Transmission)

The Agency currently transmits the Wireless File to most posts via radio-teletype using VOA or ITT facilities. The quality of reception is often poor, and program use is constrained by VOA broadcast schedules. The Agency has initiated a program to improve transmission of the Wireless File to overseas posts through the installation of direct circuits to Agency posts. Where available, the Agency will share State Department high speed communications circuits, rather than install separate USICA circuitry. The $652,500 increase in FY-82 funds represents full year costs for circuits installed in FY-81. No funds are included in the FY-82 budget request for additional circuits.

B. Wireless File Text Editor

The Wireless File Text Editor is a system which will allow the automatic production of the news items for the Wireless File. Articles will be composed and edited on computer terminals and then transferred electronically to the File. The system will help writers and editors make more effective use of their time, thus allowing them to meet expanding workload and tight deadlines.

The RFP for competitive procurement of this system is being produced and should be issued later this year. The $202,000 increase in FY-82 funds represents partial year cost for the system, an estimate based upon a feasibility study. Actual system cost will be determined when bids are received from competing vendors.

C. Automated Cable Distribution System

The Automated Cable Distribution system is an automated message switching system which distributes incoming cable traffic electronically through the Agency. The system will tie directly into the Diplomatic Telecommunications System (DTS) of the Department of State. It will extend the capabilities of the DTS to include internal routing of USICA traffic, electronic storage of referenced telegrams and automatic delivery of unclassified cables to key points within the Agency. The system will replace a manual messenger service that is slow, labor-intensive and that cannot be improved without additional staff.

The central system and one of the remote stations were purchased with FY-79 funds. The remainder of the system was acquired on a six year lease to purchase plan beginning in FY-81. The increase of $185,200 in FY-82 represents the full year cost of the system.

D. Washington Office Automation

The Washington Office Automation project will provide an Agency-wide system which has capabilities for word processing, electronic mail, cable creation and transmission and access to the Agency's central computer system. The system will interconnect compatible word processors throughout the Agency and will replace many of the incompatible word processors currently installed.

The system is being prototyped in PGM offices and should help to speed the preparation of program materials and improve the management of multi-media projects. ECA offices will be the second group brought into the system. Fiscal 1982 costs for this project will be $101,460 less than FY-81 costs due to the cost savings which can be realized from the reduction in lease cost for current word processing equipment in PGM which will no longer be needed, the non-recurring FY-81 costs for acquisition of hardware to interface the word processing system to the telecommunications system to allow for the creation and distribution of cables, and the leasing, rather than purchase, of equipment in FY-82. FY-82 plans call for the installation of 25 word processing terminals in ECA and the Area offices.

E. Agency Computer

The Agency's central data processing capability desperately needs upgrading to enable the Agency to carry out its mission. During FY-80, a feasibility study determined that the Agency's present computer facility is inadequate to support current Agency mission needs. Based upon this, the Agency received approval from GSA to procure a more reliable and sophisticated system at an overall costs saving of approximately $4500/month. Approval was granted to procure this system on an interim two year basis while we prepared a complete formal RFP for a system which directly addresses the Agency's processing needs. The interim system was installed in February 1981 and is now operational.

The FY-82 increase of $454,000 for the project includes funds to prepare for a replacement computer during FY-83. Based upon a two year procurement cycle, we have estimated that $110,000 will be required for physical, electrical and security alterations to prepare the site for the new computer during FY-82 in order to have the site ready by FY-83. An additional $102,000 is required for the conversion of existing software to the new system. Additional conversion costs will be required in FY-83 also, but funding in FY-82 is necessary to assure that software conversion is completed by the date the new system is installed. This is especially important in light of the establishment of the Federal Conversion Support Center (FCSC). The Agency may be required to fund a software conversion study during FY-82 through the FCSC before we can proceed with the procurement. Travel funds of $15,000 will be required to support the benchmarking of the competitively proposed computer systems during FY-82. An additional $227,000 is needed in FY-82 for the continued development of software systems to use the capabilities of the interim computer system to support on-going efforts to improve the Agency's management systems and to expand the index to Agency program materials to cover additional materials and to support additional posts.

F. Minicomputers (Overseas)

In conjunction with the State Department and AID, the Agency is acquiring minicomputers for installation and operation at overseas posts to support mission programs. This equipment will provide support to such Agency systems as the Distribution and Record System (DRS), automated receipt of the Wireless File, library systems, student counseling, the management of program and financial resources, and retrieval of information from Agency program products.

FY-82 represents the second full year of the Agency's long range plan for the installation and operation of these systems. We currently have systems installed in New Delhi, Brasilia, Tokyo and Belgrade and one will be installed in Caracas later this year. The DRS software is currently installed in New Delhi, Brasilia and on the State system in London. Installations of DRS are planned later this year in Belgrade and Caracas and on State equipment in Bonn, Pretoria and Rome. A Student Counseling system is being tested in Tokyo and we are beginning testing of a financial management package. Development of a system to receive and edit the Wireless File and to support library programs will begin later this year.

During FY-82 we plan to buy peripheral equipment to tie into six State Department mini-computer systems, and to install one additional USICA system. Additional installations also imply increased travel and shipping costs for installation of both hardware and software systems. Increases in the maintenance costs will continue as the number of machines in the field grows. Increases in software costs result from the development and procurement of additional software systems to take full advantages of the machine capabilities to support Agency overseas programs. The total increase for FY-82 is $259,335.

G. Programmable Word Processors (Overseas)

In a program similar to the minicomputer program, the Agency is acquiring programmable word processors in conjunction with State and AID for installation at our medium sized field posts. This equipment will support the same Agency programs that the mini-computers will at larger posts, but is more cost-effective for the needs of these medium sized posts.

Programmable word processors are currently installed in fifteen posts. Development of the Distribution and Record System is complete and the package has been installed in Ottawa, Abidjan, Accra, Lagos, Buenos Aires, Santiago, Lima, Budapest, Tel Aviv, Singapore and on a State system in Kuala Lumpur. A Student Counseling system will be available for installation later this year. We are also developing a system to support the automatic receipt and editing of the Wireless File and are investigating financial management software.

FY-82 represents the second full year of installation and operation of these systems. During FY-82 we plan to install nine additional programmable word processors and to buy peripheral equipment to tie into two State systems. Increases in travel are necessary to support the installation of the equipment and to properly train the field staff. Increases in maintenance costs will continue to grow as the number of systems in the field increases. The net increases for FY-82 is $110,270.

QUESTIONS SUBMITTED BY HOLLINGS

BROADCASTING TO IRAN AND AFGHANISTAN

QUESTION:

What is the current level of VOA broadcasting to Iran and Afghanistan?

ANSWER:

As of April, 1981, VOA broadcasts 5 hours per day in Farsi to Iran, which is also understood by a large population in Afghanistan, and a half-hour per day in Dari, the chief language of Afghanistan. As soon as additional staff can be hired and trained, an additional half-hour of Dari will be broadcast to Afghanistan. VOA English-language broadcasts can also be followed.

BROADCASTING TO MUSLIM COUNTRIES

QUESTION:

Last year Congress directed that broadcasts to Muslim countries be increased by $2.1 million over the amount budgeted. How has this been implemented? What programming is budgeted in 1982 for Muslim areas?

ANSWER:

The additions proposed by the Congress within the $2.1 million increase have been added to either the FY 1981 or the FY 1982 budgets, depending on the availability of people to be hired and the technical capability of adding broadcast time. Expansions already implemented or proposed include daily increases in Bengali, Turkish, Urdu, and Uzbek, as well as the addition of Azeri (within a few months, as of April); Indonesian, Hausa, and Swahili, as well as the addition of Amharic (early in FY 82, it is hoped). The total budget figure for FY 82 for programs to countries of the Islamic world, including Muslim Soviet republics, amounts to $12,868,035 (see attached list).

FY-82 BUDGET
BROADCASTS TO MUSLIM AREAS

LANGUAGE	PROG OPER	TRANSMISSION	TOTAL
Amharic	171,105	50,345	221,450
Arabic	1,147,695	782,720	1,930,415
Azeri	221,620	46,410	268,030
Bengali	545,975	154,600	700,575
Dari	382,240	382,340	764,580
English to Africa	--	1,763,580	1,763,580
English to East Asia	--	566,700	566,700
English to Mid East	--	574,525	574,525
English to South Asia	--	608,750	608,750
Farsi	959,950	406,055	1,366,005
Hausa	338,010	100,700	438,710
Hindi	341,125	201,000	542,125
Indonesian	743,375	208,720	952,095
Swahili	395,075	190,190	585,265
Turkish	338,505	86,750	425,255
Urou	401,125	134,060	535,185
Uzbek	440,500	184,290	624,790
TOTAL	6,426,300	6,441,735	12,868,035

CONTRACTOR FOR SRI LANKA FACILITY

QUESTION:

USICA is asking $80,900,000 for Acquisition and Construction of Facilities for VOA including six 250 kw transmitters to be installed in Sri Lanka at a cost of $66,400,000. Are the Sri Lanka transmitters and supporting antennas to be built and installed by American firms?

ANSWER:

The Sri Lanka project will be installed by an American general contracting firm who will, in turn, subcontract with suppliers for transmitters, antennas and other items. Since this subcontracting process is outside of our control, no assurance can be given that American subcontractors will receive the awards.

POSSIBLE USE OF VOA FACILITY BY GOVERNMENT OF SRI LANKA

QUESTION:

Will the Government of Sri Lanka have a right to use the proposed new transmitting facilities? If so, under what circumstances and at what cost?

ANSWER:

Pursuant to our agreement, the Government of Sri Lanka will not share time on the proposed new transmitting facilities. Instead we will provide them with broadcasting equipment for their exclusive use.

The recently revised agreement provides for the U.S. Government to acquire and deliver to the Government of Sri Lanka a 100 KW shortwave transmitter or other equipment of equal value. In partial return for authorization to broadcast from Sri Lanka, we have relinquished all rights to the present broadcasting facility. The Sri Lankan Broadcasting Corporation intends to utilize the 100 kw transmitter and the three 35 kw and one 10 kw existing transmitters for their programming.

AUDIENCE FOR SRI LANKA FACILITY

QUESTION:

What is the size of the target audience to be covered by the new facility?

ANSWER:

The new facility at Sri Lanka will reach listeners in South Asia, the Central Soviet Union, Western China, South East Asia, and part of East Africa. It is estimated that this facility will reach areas of the world where a population of one billion people live and where there are an estimated 50 million radios (based on statistics in World Radio TV Handbook and National Basic Intelligence Handbook).

USE OF VOA FACILITY BY OTHER U.S. GOVERNMENT SUPPORTED RADIO OPERATIONS

QUESTION:

Does the agreement provide for any other U.S. Government supported radio operation to use the facility, such as Radio Liberty?

ANSWER:

The new facility will add only a marginal increase in air time which is fully scheduled for VOA use. There will therefore be no time available for other broadcasters.

The intent of our agreement with the government is for the broadcasting purposes of Voice of America. There is no provision in the agreement to permit use by other broadcasters.

STATUS OF FUNDS FOR MAJOR IMPROVEMENT PROJECTS

QUESTION:

What is the current status of the funds that Congress appropriated in 1979 to upgrade the VOA's transmitters?

ANSWER:

Philippines Augmentation Project: Status of Funds

Original Project Estimate: *	$13,098,265
Revised Project Estimate:	
Obligations - Current (as of 9/30/80)	$ 2,482,870
- Planned in 1981	3,252,951
- Planned in 1982	97,600
	$ 5,833,421
Reprogrammed Funds:	
To Botswana Short Wave Project	4,634,435
To Sri Lanka Short Wave Project	1,863,814
To Woofferton Augmentation Project	427,914
To Land Rentals	338,681
	$ 7,264,844
	$13,098,265

Liberia Augmentation Project: Status of Funds

Original Project Estimate: *	$13,028,634
Revised Project Estimate:	
Obligations - Current (as of 9/30/80)	$ 1,217,179
- Planned in 1981	26,250
- Planned in 1982	1,395,000
	$ 2,638,429
Reprogrammed Funds:	
To Botswana Short Wave Project	$10,480,205
	$13,028,634

Woofferton Augmentation Project - Status of Funds:

Original Project Estimate: *	$6,340,000
Reprogramming from the Liberia Project to cover 12/19/77 exchange rate of £1.00 = $1.88	579,000
Reprogramming from Philippines Projects, Okinawa Restoration and Dixon/Delano improvement projects to cover exchange rate of £1.00 = $2.05	2,307,400
TOTAL, Original Project	$9,226,400
Reprogramming from Philippines project to cover 11/30/80 exchange rate of £1.00 = $2.373	427,914
Revised Project Estimate	$9,654,314

* (As submitted in FY-1980 and 81 congressional budget; funds appropriated in FY-76, 78 and 79)

DEFERRED AUGMENTATION PROJECTS

QUESTION:

The augmentation of the VOA facilities in East Asia and Africa has apparently been delayed due to significant increases in the cost estimates to complete these projecsts (H. Doc. 97-19). Where are the deferred projects located, and how do the present estimates compare to the original estimates?

ANSWER:

Project	Original Project Estimates		Estimate of 2/ Revised Project
	Original 1/	Revised	
Philippines Augmentation	$ 13,098,265	$ 25,318,860	$ 5,833,421
Liberia Augmentation	13,028,834	26,746,068	2,638,429
Modernization of VOA Master Control	1,035,000	1,035,000	1,035,000

1/ As submitted in FY 1980 and 1981 Congressional Budgets

2/ As proposed in FY 1982 Congressional Budget

IMPROVEMENT OF VOA FACILITIES IN AFRICA AND EAST ASIA

QUESTION:

In view of our build-up in the Persian Gulf areas, shouldn't there be a priority on improving the facilities in Africa and East Asia?

ANSWER:

Indeed, priority should be given to insuring adequate facilities for coverage of this important area of the world. Rather than simply improving at this time the existing facilities in Africa and in East Asia, we feel that priority should be given to the proposed new Sri Lanka facility which will provide significantly improved coverage of the Persian Gulf area while at the same time strengthening our coverage of South Asia and Western China where signals from other VOA transmitters are marginal. The new facility in Sri Lanka also will provide for greater diversification of VOA facilities for coverage of Central Asia, Southwest Africa and East Africa.

VOA STAFF MORALE PROBLEMS

QUESTION:

The news media have repeatedly reported in recent months that the VOA is plagued with staff morale problems which have impeded the effectiveness and quality of broadcasts. Are these problems real? If so, please elaborate on the nature of them. What corrective actions have been taken or planned? What has been the impact on programming?

ANSWER:

I am well aware of the problems that could be contributing to such conditions at VOA. The fact is that VOA has been expanded in the past two years in several different languages

Because of the personnel system under which we as a government agency must operate, we find that it has taken long periods of time to locate, test and process for staff the highly qualified talent that oftentimes is extremely difficult to find for our language broadcaster positions. So far, there has been no perceptible lessening of the quality of the VOA programs, but there is little question that a continuation of this kind of overextension of talent can only result in a reduction in quality and effectiveness of programming.

Ways in which we can more effectively respond to problems in staffing agency operations have been an area of great concern to Agency management, and this certainly will be a high priority item on the agenda for the new Agency Director. In the meantime, we recently have acquired from the Office of Personnel Management delegated authority for independent recruitment and examining of candidates to fill broadcasting and technical positions at VOA. We also are conducting a careful review to insure that our security clearance requirements on all positions -- including those at VOA -- are kept to the absolute minimum consistent with the law. This will contribute significantly toward reducing the time it takes to fill critical positions.

The other problem concerns physical space. VOA staffs are housed in seriously overcrowded conditions with many VOA functions fragmented among several different locations. We are working closely with the General Services Administration in an effort to alleviate these conditions. We can only remain hopeful that our joint efforts in this regard will provide some relief in the near future.

RESTORATION OF USICA CENTER IN PAKISTAN

QUESTION:

The Budget includes $561,000 for restoring the Center in Islamabad, Pakistan, destroyed by the riots in 1979. What is the total cost of restoring the Center? How much is the Government of Pakistan contributing to the restoration of the Center?

ANSWER:

The Center now under construction in Islamabad, Pakistan, was not damaged during the 1979 riots. This Center is being built by a Pakistan life insurance company to USICA specifications and the $561,000 in the FY 1981 column of the FY 1982 budget is for procurement of furnishings and equipment for the Center ($186,000) and for five years advance rent ($375,000).

However, the American Centers in Rawalpindi and Lahore were destroyed in the 1979 riots, as well as USICA offices in the American Embassy in Islamabad. The U.S. Embassy in Pakistan has submitted a claim to the Government of Pakistan for restitution of all damages to U.S. property including the following amounts for USICA facilities:

Facility	U.S. Dollars	Pakistan Rupees (Dollar Equivalents)
American Center Rawalpindi	$335,000	$ 65,454
American Center Lahore	385,252	308,567
USICA Damages in American Embassy	22,000	--
Total	$742,252	$374,021

The Government of Pakistan has promised full restitution for all damages and we have already received $102,676 and $212,521 equivalent in Pakistan Rupees for the Lahore building reconstruction costs. We expect the balance to be paid within the next few months.

ENCOURAGEMENT OF FOREIGN STUDENTS TO ENROLL IN US COLLEGES

QUESTION:

What efforts do USICA officers overseas make to encourage prospective foreign students to enroll in American colleges and universities?

ANSWER:

USICA offices, Fulbright Commissions, and private organizations working in cooperation with USICA (like IIE or Amideast) provide information and advice about American higher education to persons seeking admission to U.S. colleges and universities. Encouragement and assistance, mostly in the form of counselling, is provided to the qualified student in order to locate the academic institution appropriate to his or her field of study and to meet other personal needs of the student--e.g., reasonable cost, availability of English language instruction, climate preferences, etc. Except for those considerations, student advisers generally do not promote an institution; the choice is left to the students. Actual recruitment is generally performed overseas by representatives of the U.S. schools themselves, such as an administrator, faculty member, alumnus or, often, an agent who may represent a number of schools. Because of the abuse which has become associated with some overseas recruitment efforts, USICA and Agency-related offices tend to avoid involvement with recruiters unless they are known to be reputable.

COLLEGE CATALOGS IN ICA READING ROOMS

QUESTION:

Are ICA's reading rooms sufficiently stocked with current college catalogs and other materials from American schools in the same manner as the Foreign Commercial Service provides business information to foreign firms?

ANSWER:

USICA libraries, cultural centers and student advisory offices maintain collections of college catalogs, often obtained through the Agency, and sometimes obtained directly from the American institution. The size of the collection varies from country to country, with general emphasis on graduate-level catalogs. There is an increasing trend overseas toward microfiche catalog collections which provide information on many schools and which are kept up-to-date more efficiently. USICA offices also have available to them collections of reference materials on American higher education and the particular needs of foreign students in the U.S. Current journals on higher education in the U.S. are also available in USICA libraries overseas.

COST PER FULBRIGHT PARTICIPANT

QUESTION:

What is the average cost to ICA of a Fulbright Fellowship?

ANSWER:

For FY 1982 the average cost is estimated to be $9,762.

FUNDING LEVEL -- FULBRIGHT PROGRAM

QUESTION:

How much is budgeted for Fulbright Fellowships in 1982 and how does the program level compare with the number of fellowships awarded 3 years ago?

ANSWER:

The total U.S. contribution budgeted for the Fulbright Fellowships in FY 1982 is $39,946,681 for 4,092 grantees. In FY-1979 the amount budgeted was $25,697,719 for 3,228 grantees.

PROJECTING FUNDING LEVELS - IV PROGRAM

QUESTION:

It is not clear from the Educational and Cultural Affairs budget section how many International Visitors and what funding levels are projected for Fiscal Year 1982. What are the levels projected?

ANSWER:

We anticipate that our funding and programming levels will remain unchanged from FY 1981 levels. We project a budget of $19,846,111 (which represents a breakdown of $19,696,289 and $149,822 in Special Foreign Currency), and 1,615 grantees.

FULBRIGHT VS INTERNATIONAL STUDENT EXCHANGE PROGRAM

QUESTION:

How does the cost of a Fulbright Fellowship compare to the International Student Exchange Program that ICA supports through Georgetown University?

ANSWER:

The average cost of a Fulbright Fellowship to the U.S. Government is higher than the average cost of a student exchanged via the ISEP mechanism, but the comparison is misleading. In 1981, with 155 exchangees, the ISEP average is $3,226. If ISEP is able to expand the numbers exchanged to the 1,200 originally projected for academic year 1982/83 with the $350,000 now budgeted by USICA, the average cost to the U.S. Government for FY 1982 funds would be approximately $290. (Other costs would be paid by the student or his government). The average cost for all Fulbrighters exchanged (students, teachers, professors) will be $9,762. This figure includes a variety of grants (student, teacher, and professor, but not undergraduate), various services to the Fulbrighter (such as advisory facilities), and an array of benefits such as international travel stipends, books, etc.

The Georgetown-sponsored ISEP represents a test case for exchanging U.S. undergraduates (who are not eligible for the Fulbright Program) and foreign students at both the undergraduate and graduate level. If the experiment proves successful, ISEP would provide a means by which students (mostly undergraduates) could be exchanged between participating U.S. and foreign universities at relatively low central administrative costs.

FUNDING FOR GEORGETOWN INTERNATIONAL EXCHANGE PROGRAM

QUESTION:

We understand that Georgetown needs $600,000 for the International Student Exchange Program. Why has ICA budgeted only $350,000 for the ISEP?

ANSWER:

Georgetown University indicated that it would request $600,000 from us for FY 82, a figure which we felt was too high for program development and administration. When the OMB directed substantial cuts in the Agency's exchanges programs proposed in the Carter Administration's FY 1982 budget, we felt that in making our own cuts, relatively new programs were of somewhat lower priority than our longer-established programs, such as most Fulbright and the International Visitor programs. Thus, we dropped plans to increase selected Fulbright programs, reduced the Humphrey fellowships to an average of the numbers funded in FY 80 and 81, and reduced the Georgetown funding to the average of the 1980 ($200,000) and 1981 ($500,000) levels, or to $350,000. This amount is $250,000 less than originally projected for FY 1982, $150,000 less than in FY 1981, but $150,000 more than in FY 1980.

GOALS OF IV PROGRAM

QUESTION:

What are the goals of the International Visitor Program and how effectively does the program meet these goals?

ANSWER:

The International Visitor Program is designed to invite foreign opinion and decision makers and other potential leaders to the United States for a period of up to 30 days of observation and consultation with professional colleagues. The visit has two primary goals: it is a learning experience for the participant, to expose him to what Americans are doing in his professional field, and to allow him to make lasting contacts for continuing interchange. The Program permits foreign visitors to gain a better appreciation of the United States, its history and philosophical foundations, by extensive travel in this country, by exposure to American society and ideas, and by encouraging contact with Americans who are in the same professional field as the participant.

The Program meets its goals exceptionally well. Visitors invariably comment favorably on the programs which meet their professional needs and personal interest. Professional and personal contacts are frequently made which grow and deepen with time, to the benefit of both the visitor and his U.S. counterpart. Participants in the International Visitor Program frequently retain close relations with Americans on a professional level and often on a personal basis in the following 10, 20 and even 30 years after their initial visit.

We know from interviews with countless former participants that the Program serves to increase their fundamental understanding of the United States and often to dispell negative myths and misperceptions the Visitor may have held before visiting the U.S.

GROUP VISIT RULE FOR IV VISITORS

QUESTION:

Under the "50% rule," one half of all international visitors must come to the U.S. on group visits rather than on individual trips. What is the effectiveness in terms of costs and benefits in the group approach compared to those of individualized visits?

ANSWER:

Although it was anticipated that group projects would be less expensive than individualized programs, a preliminary look at cost factors showed that group and individualized programs were almost similar in cost. Because of a need for fewer escort interpreters, some savings could be made for group projects; on the other hand group projects normally require enhancement funds for speaker fees, thematic specialists who travel with the group, and for incidental expenses unique to group travel. Despite the fact that cost therefore is not a determining factor for group projects, the program benefits of such projects are considerable, and in an important measure, different from individualized visits. Groups are often able to obtain top level speakers in their field, frequently have access to high level officials more easily than do individual visitors, and, in addition, create a dynamic of their own which helps to energize the topic under discussion and to provide a number of different points of view.

BENEFITS OF IV PROGRAM

QUESTION:

What are some examples of the benefits of the International Visitors Program over time related to the investment USICA has put into the program?

ANSWER:

The aim of the International Visitors program has been to establish communication with young and potential leaders of foreign countries early enough in their career so that the exposure to American ideas and political and social philosophies can stimulate a lifelong interest in the United States and bring some perspective to bear on the their future relations with our country. Today 33 of the world's heads of state and government and 378 cabinet ministers in 92 countries are former participants in the U.S. government's International Visitor and academic exchange programs (including Helmut Schmidt, Giscard d'Estaing, Anwar Sadat, Bruno Kreiskey and Indira Gandhi). Many of them participated in our programs in the late 1950's, just as they were emerging as potential leaders of their own countries. We can also document hundreds of cases of influential journalists, editors, university rectors and other leaders who have returned from their experiences as International Visitor Program participants more receptive to American ideas and points of view.

Although the investment in exchanges programs in terms of effort and funds has been substantial ($700 million over 30 years for all exchanges, including academic), we believe that few other U.S. government programs effectively establish the fundamental mutual understanding and in-depth communication between peoples of foreign countries and the United States so necessary in an increasingly interdependent world.

PRIORITY OF IV PROGRAM

QUESTION:

How does the Agency measure the Program's effectiveness in order to prioritize the International Visitors Program's share of resources vs. that of other activities?

ANSWER:

In evaluating the effectiveness of the International Visitor Program in comparison with other Agency activities, the single most important factor which establishes the high priority the Program enjoys in our Agency is its ability to provide an influential foreigner first-hand exposure to the United States, its values, institutions and people. The 30-day exposure to the U.S. of a Helmut Schmidt or a future Helmut Schmidt provides a more in-depth, fundamental and long-lasting impression than our other programs which take place overseas. A book, film, lecture, cultural presentation or seminar provide a secondary frame of reference for understanding about the United States, but the personal insight gained from a visit to the United States must rank higher in our priority listing than most, if not all, of our other activities.

Among the persons of (at the time) potential influence whom we invited to the United States on this and similar programs are (besides Schmidt mentioned above) 33 present heads of state or government, including Anwar Sadat, Indira Gandhi, and Giscard d'Estaing, and 378 cabinet members from 92 countries.

RESEARCH STUDY OF SOVIET PUBLIC DIPLOMACY

QUESTION:

The General Accounting Office has recommended that USICA study the feasibility and utility of having some government agency publish periodic analyses of covert Soviet efforts to influence American public opinion and policymakers on international issues. Do you intend to do so?

ANSWER:

The Agency has not proceeded with the study, and has no current plan to do so, because of concern that it exceeds both our research mandate and resources. In the Agency's response to the GAO report, transmitted from Acting Director Bray in his October 12, 1979 letter to the Honorable Elmer B. Staats, the following was included regarding this recommendation:

"Although USICA has researched Soviet international public diplomacy activities, we believe the responsibility for domestic research, if necessary, should be assigned to another federal agency. This question appears to us to come close to involving domestic security concerns, a matter outside the competence of USICA."

ARMS CONTROL AND DISARMAMENT AGENCY

STATEMENT OF JAMES L. MALONE, ACTING DIRECTOR

ACCOMPANIED BY:
JAMES T. HACKETT, ADMINISTRATIVE DIRECTOR
THOMAS GRAHAM, JR., GENERAL COUNSEL
RONALD P. PASSERO, BUDGET AND ACCOUNTING OFFICER

BUDGET REQUEST

Senator WEICKER. Our next request is that of the U.S. Arms Control and Disarmament Agency. The amount requested is $16,768,000, a decrease of $232,000 over the 1982 base. It provides for 169 permanent positions.

Appearing on behalf of this request is Mr. James Malone, the Acting Director. He is accompanied by Mr. James T. Hackett, Administrative Director; Thomas Graham, Jr., General Counsel; and Ronald P. Passero, Budget and Accounting Officer. Please present your statement in any way you deem fit.

DIRECTOR'S STATEMENT

Mr. MALONE. Thank you very much, Mr. Chairman.

If I may, I would like to read my statement.

My appearance before you today as Acting Director of the Arms Control and Disarmament Agency symbolizes the period of transition in which the Agency now finds itself.

We expect the President to name a new Director soon, after which an intensive review will be completed of the prospects for various arms control efforts in the months ahead.

This administration is committed to the goals of arms control, a posture epitomized by the President in his recent address to the Congress on economic affairs when he stated:

"We remain committed to the goal of arms limitation through negotiation. I hope we can persuade our adversaries to come to realistic, balanced, and verifiable agreements." Accordingly, we seek your support for our appropriation request now before you.

During the current period of review, we are cooperating fully with the President's objective of reducing Federal spending and employment. We have reduced the Carter administration's recent fiscal year 1982 request by over $2½ million, to $16,768,000. This action, combined with a $2 million reduction in our fiscal year 1981 funding, will result in a total reduction during the 2-year period of more than $4½ million, or about 12 percent of our total budget.

During the past administration, we agreed to a substantial cut in personnel from 201 to 184 in fiscal year 1981; there will now be an additional fiscal year 1981 cut of 9, to 175, and in fiscal year 1982 a further reduction to 169. This represents a total reduction of 32 positions, or 16 percent, over the 2-year period.

Mr. Chairman, I believe that these reductions should be seen in perspective: The cuts in money and manpower I have just described do not imply any intention on the part of the administration to reduce arms control efforts. In fact, these cuts are comparable to those requested of most other executive branch agencies.

In the case of ACDA, these reductions are now possible because of the SALT recess, the slower pace of other arms control negotiations, and a reduced emphasis by ACDA on research in aternative nuclear fuel cycles.

At this time we have no money specifically earmarked for SALT negotiations, but if the talks are resumed on short notice we would be able to hold some initial meetings of the SALT delegations with our present resources. However, if the talks were to go on for several months we would need supplemental funds. Meanwhile, our staff is continuing to work on the issues we discussed with the Soviets last autumn on long-range theater nuclear forces.

We had consultations with our NATO Allies on those issues in Brussels quite recently. We will discuss them at the NATO conference next week and we discussed them in the consultative group which was the same one we met with in Brussels last month subsequent to the ministerials. We expect to be meeting with the Soviets at some time in the future. These discussions were the result of the December 1979 NATO decision to pursue arms control discussions on theater nuclear forces in tandem with the alliance plan to modernize NATO nuclear forces in Europe.

In addition, ACDA continues to participate in the work of the Standing Consultative Commission—SCC—the joint U.S.-U.S.S.R. body that meets periodically to review compliance with the SALT agreements. The next SCC meeting will be held later this spring.

ACDA is continuing its efforts to curb the spread of nuclear weapons. In accordance with this commitment, we are placing special emphasis on countries considered to be near-term proliferation risks, on diplomatic measures for encouraging additional adherence to relevant treaties, and on international safeguards.

Since the United States expects to rely increasingly on the safeguards system of the International Atomic Energy Agency—IAEA—as a key component of our overall nonproliferation effort, it is essential to provide the IAEA with adequate financial, political, and technical support. Thus, despite the overall reduction in ACDA's manpower and research funding, we are still planning to devote both considerable staff resources and a large part of our research program to strengthening the IAEA safeguards system.

We are, of course, also continuing to carry out all of our statutory responsibilities. We assess arms and technology transfers to other countries for relevance to U.S. arms control objectives, review nuclear exports, and formulate nonproliferation assessment statements. Also, we have recently begun the fiscal year 1983 cycle of statements on the arms control impact of certain proposed U.S. weapons programs.

In the field of multilateral diplomacy, the 40-nation Committee on Disarmament continues to meet in Geneva. The Committee has established four working groups which are discussing arms control issues related to chemical weapons, including the problem of verifiction; radiological weapons, assurances to nonnuclear weapon states against nuclear attack and a comprehensive program for disarmament.

In addition, the mutual and balanced force reduction negotiations between the NATO nations and the Warsaw Pact countries are continuing in Vienna. ACDA provides substantial support for this effort, which is proceeding toward a first-phase agreement.

During the months ahead, we plan to devote more attention to the critical problem of verification, both of existing agreements and of possible future new ones. We plan to allocate personnel, resources, and research funds to assure the capability of adequately verifying all arms control agreements to which the United States is or might become a party.

Although the reductions in the Agency's proposed budgets for fiscal year 1981 and fiscal year 1982 have been drawn largely from the external research program, we will continue to have a program with a major emphasis on the improvement of international nuclear safeguards, and on verification issues.

PERSONNEL NOMINATIONS

Senator WEICKER. I suppose my overall question deals with the administration's commitment in this area, notwithstanding the comments that you made in your statement.

How many nominations have been made to fill the executive level at ACDA.

Mr. MALONE. No nominations have yet been announced, Mr. Chairman.

As I mentioned in the first paragraph of my statement, we expect almost momentarily the announcement of the nomination of the new Director of the Agency. I would assume very shortly after that is completed, the announcement of the other executive designations will be made.

As you know, there is, of course, the Deputy Director and the four Assistant Directors. We expect it to take place very soon.

Senator WEICKER. You are the first one to appear before the committee who is either not confirmed or is not a career Federal employee in a particular agency. It is my understanding that you are up for Assistant Secretary for Oceans, is that right?

Mr. MALONE. Yes, the President has nominated me and I have had my confirmation hearing. I have not yet been confirmed for the post of Assistant Secretary of State of Oceans Environmental and Pacific Affairs.

Mr. Chairman, my designation as Acting Director of the Arms Control Agency was made by the President on the 20th of January. I have been serving in that capacity since that time. Of course, I will relinquish that responsibility just as soon as the new Director has been nominated.

Senator WEICKER. You can't very well do an effective job as an Acting Director of this Agency, with all of its international commitments. In fact, you have never been confirmed by the Senate?

Mr. MALONE. That is correct, Mr. Chairman, and I would be the first to agree with you that the scope of my current responsibilities are such that I feel that it is highly desirable that we move as rapidly as possible on the nomination of the new Director and I believe that is, as I have said, just about to take place.

Senator WEICKER. When you say "just about to take place," what is your guess?

Mr. MALONE. I think within the next few days, perhaps even within the next day or so.

That is not hardened fact, but I expect it momentarily.

Senator WEICKER. Let me say, first of all, I wish you the best of luck in the position you are scheduled to go into. That is actually my area of expertise. It is very important, as important as the acting position which you now hold. I find it a little difficult to get into matters of policy with you right now in this Agency when, indeed, I gather things are just on a hold basis until we do get a Director, until the administration makes up its mind as to what its course of action is going to be.

Mr. MALONE. I think that is a fair description, Mr. Chairman. Of course, we have been moving along with the work of the Agency. We have certainly been making the relevant studies and have our whole arms control posture under review as I have made it, I believe, clear from my statement. But in terms of the new departures, the initiatives, where the administration is going to move on this, I think clearly that is going to be the responsibility of the new Director. This will not be my responsibility.

ARMS CONTROL

Senator WEICKER. I don't see any point in pursuing any of the detailed questions at this time. To me, until the administration appoints or fills the position, starts to fill the positions, I would assume this is a matter of secondary importance to them. I might add it is not a matter of secondary importance to a great number of us around. I was one who disagreed with SALT II and I'm not so sure I would have voted for it. I know one thing, those discussions should be ongoing. That is just crucial, this whole business of nuclear arms buildup is just insanity, both in terms of life and in terms of resources. We are right in the middle of it.

Mr. MALONE. Mr. Chairman, may I just respond, make one observation? I do not believe that the question of arms control is not of considerable moment to this administration. I recognize, of course, the validity of your point in terms of needing to get our personnel in place. I think the administration is sensitive to that and they are attempting to move forward with this. I believe you will see that momentarily, but I do believe that the administration attaches a very high level of importance to the whole arms control area and, of course, to the work of this Agency.

CONFIRMATIONS

Senator WEICKER. Mr. Malone, let me assure you, that the nomination of persons to fill positions in the Defense Department, every one of the military services, all the second and third echelon positions, they are all there. There is nothing here, zero. I am not going to argue with you. To me the record speaks for itself as to who is committed to what. I just don't think there is an importance attached to this. Some of us feel there really ought to be a valid effort made in this contradiction, if you will, on the other side of the argument. I am not going to be satisfied on that point until I see the people. There is no way, you have important work to do. I wish the Senate would get on with your confirmation and let you do the work you are supposed to do.

Mr. MALONE. Mr. Chairman, if I might just make a brief observation, and, again, in my other responsibility, I have very great hope we will be able to do that. As you know, thus far we only have one Assistant Secretary of State confirmed and hope to have the opportunity to wrap that up rapidly and we can move on to this. Obviously I feel a very strong responsibility to move into that and get underway fast. I think the administration is going to come down on this momentarily. There have been some concerns, as you know, in terms of the nomination. They have been resolved and it will be here momentarily.

CLOSING COMMENTS

Senator WEICKER. I don't think there is anyone that I know of who doesn't concur in the importance of the work of this Agency. I don't want to have the wrong signal given here that some of my colleagues in the Senate think we are better off without this Agency. We are not better off without it. It is crucial to the world. Another point of view has been presented. I want to present this person's point of view. As I said, God knows, I don't consider myself a soaring dove, pacifist, or anything of that nature. I appreciate the needs of the military. We cannot afford not to be at this business full time. I would want the record left open for possible statements by whoever the Director is going to be and with the possibility of asking for an appearance by whoever that Director happens to be. So we will just let this matter hang in abeyance.

Thank you very much.

FEDERAL TRADE COMMISSION

STATEMENT OF DAVID A. CLANTON, ACTING CHAIRMAN

ACCOMPANIED BY:

CHRISTIAN S. WHITE, EXECUTIVE DIRECTOR
ERNEST J. ISENSTADT, ACTING GENERAL COUNSEL
JAMES H. SNEED, DIRECTOR, BUREAU OF CONSUMER PROTECTION
E. PERRY JOHNSON, DIRECTOR, BUREAU OF COMPETITION
MICHAEL LYNCH, DIRECTOR, BUREAU OF ECONOMICS
BARRY J. KEFAUVER, DEPUTY EXECUTIVE DIRECTOR
JAMES A. WILLIAMS, DIRECTOR, DIVISION OF BUDGET AND FINANCE

BUDGET REQUEST

Senator WEICKER. Our next witness is that of the Federal Trade Commission. They are requesting $16,458,000, a decrease of $2,942,000 from the 1982 base and a decrease of 208 positions.

Appearing on behalf of this request is David Clanton, Acting Chairman. He is accompanied by Christian S. White, Executive Director; Ernest J. Isenstadt, Acting General Counsel; James H. Sneed, Director, Bureau of Consumer Protection; and James A. Williams, Director, Division of Budget and Finance.

We will be pleased to hear your statement with regard to your request.

Mr. CLANTON. I will attempt to be as brief as possible. I have a short oral statement that I will deliver.

The program budget represents a 10.9-percent reduction in commission funding and a 17.8-percent reduction in positions. Although funding at this level permits continuation of many existing matters, it would substantially reduce the ability of the Commission to respond to complaints or initiate new matters in response to marketplace developments. OMB also has recommended that our regional offices, which account for 355 positions, be phased out over a 3-year period and that funds for the public participation program be deleted.

I now would like to highlight some of our major initiatives.

ANTITRUST EFFECTS

First in the antitrust program, we have two distinct but complementary approaches. One focuses on behavior throughout the economy. In 1982, we will continue existing investigations and litigation involving mergers, vertical price fixing and price discrimination, activities which benefit both consumers and small businesses.

We also will be alert for practices revealing overt collusion among horizontal competitors, or other collusive-type behavior, in various industries.

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The second enforcement approach focuses on the most significant sectors of the economy, with the Commission monitoring these sectors for particular anticompetitive problems. For example, in health care, we will focus on concerted actions, such as price fixing or boycotts, which may obstruct cost containment programs. Our energy programs will examine conduct that may unreasonably restrict competitive opportunities in energy markets. We will also continue a variety of investigations and litigation in the food industry.

Our transportation activities will be directed at encouraging regulatory authorities to incorporate competitive considerations in their decisionmaking. An overall reduction in resources for this program reflects the Commission's decision to withdraw its authorization for subpenas in the automobile investigation.

To provide additional guidance to those within our law enforcement jurisdiction, the Commission recently agreed to undertake an effort to clarify the "unfair methods of competition" language in section 5. This effort is designed to give the type of specific guidance the Commission provided late last year when it spelled out the legal and policy underpinnings of its consumer unfairness jurisdiction.

CONSUMER PROTECTION

On the consumer protection side, the budget reflects a renewed consideration of alternatives to rulemaking. As a result, resources for industrywide rulemaking are reduced by 61 percent from the 1980 level. These reductions will not impair the regulatory analysis program, through which the Commission will be better able to assess the economic impact of its proposals.

Our consumer protection efforts will focus on those sectors of the economy of the greatest importance to consumers. Thus, for example, we will continue to monitor vigorously energy savings claims for many products. We will examine whether certain market restrictions may unnecessarily increase prices, and reduce the availability of routine health care services, and we will focus on reducing consumer injury from serious, undisclosed deficiencies and defects associated with high-cost, complex products.

In addition, the Commission recently terminated its over-the-counter drugs trade regulation rule proceeding but will continue to scrutinize advertising for these drugs carefully to insure the claims are substantiated, and we will also maintain a firm enforcement presence with respect to our credit statutes, such as the Equal Credit Opportunity Act and the Fair Debt Collection Practices Act.

ECONOMIC ACTIVITIES

The Economic Activities Mission guides and supports our antitrust and consumer protection law enforcement efforts in both case selection and development. Economists assess the cost and benefits of the proposed antitrust and consumer protection law enforcement actions.

In 1982, the staff will develop new projects on such issues as alternative medical providers, the effectiveness of certain remedies in antimerger cases and problems in predation with regard to new product entry.

Additionally, I would note further changes are being planned in the quarterly financial report survey to reduce the burdens of small businesses.

REGIONAL OFFICES

I now would like to address the issue of the Commission's regional offices. OMB has proposed that the Commision's 10 regional offices be closed. In our view, closing all of these offices would cause serious losses to the public, to businesses, especially small business, and to the State and local officials served by these offices.

The importance of regional offices can be illustrated by a review of some recent activities. In fiscal 1980, the redress we obtained exceeded our annual budget. Nearly all of this money came from cases developed in the regional offices. In the past 3 years, for example, regional offices obtained over $100 million in redress, enough to offset their total operating costs for at least the next 7 years.

Many enforcement actions begin when area businesses or consumers affected by unlawful practices contact the regional offices. We believe these matters, most of which have significant national impact, would not have been uncovered without the regional offices' assistance. For example, the Commission's case against the major art supplies manufacturers resulted in a $1.2 million redress fund to public school systems, resulted from such a visit.

FTC regional offices also play a major educational role by helping businesses understand their rights and obligations. Each year these offices respond to over 120,000 inquiries and have numerous direct contacts with businesses and trade associations. For example, several regional offices recently held conferences for small businesses to provide advice on antitrust issues and consumer protection issues.

Closing the regional offices also would have a significant impact on State and local law enforcement. Our regional offices work closely with the State attorneys general, eliminating duplication of effort and expense. Many cases brought by the State attorneys general have followed Commission actions handled by our regional offices.

My full statement illustrates this point in greater detail.

The FTC has maintained a regional presence for over 60 years. The regional offices more than pay for their operations in pure monetary terms and contributions to the Commission's overall law enforcement efforts. For these reasons, we urge that Congress allow us to preserve this proven and efficient regional presence.

Thank you, that concludes my opening statement.

[The statement follows:]

STATEMENT OF DAVID A. CLANTON

Mr. Chairman, members of the Subcommittee, my name is David A. Clanton. I am Acting Chairman of the Federal Trade Commission. With me today is Christian S. White, Executive Director. Other members of the Commission's staff are also here to respond to any questions you may have concerning their particular operations. I am pleased to have the opportunity to testify today concerning the Commission's appropriations request for fiscal 1982.

The program budget justification before you now responds to OMB's budget guidance. It represents a 10.9% reduction in Commission funding, and a 17.8% reduction in positions. Although funding at this level would permit the continuation of many existing matters, it would substantially reduce the ability of the Commission to respond to complaints or initiate new matters in response to marketplace developments. OMB also has recommended that our regional offices (355 positions) be phased out over a three year period, and that funds for the Public Participation Program be deleted.

I now would like to highlight major initiatives in the three principal areas of Commission responsibility for fiscal 1982.

Maintaining Competition

Our antitrust program involves two distinct but complementary approaches. One approach focuses on particular types of anticompetitive behavior throughout the economy. In 1982, we will continue existing investigations and litigation involving mergers, vertical price-fixing and price discrimination (activities which benefit both consumers and small businesses). We also will be alert for practices revealing overt collusion among horizontal competitors, or other collusive-type behavior, in various industries.

The second enforcement approach focuses on the most significant sectors of the economy, with the Commission monitoring these sectors for particular anticompetitive problems. For example, in health care, we will focus on concerted actions--such as price-fixing or boycotts--which may obstruct cost-containment programs. Our energy programs will examine conduct that may unreasonably restrict competitive opportunities in energy markets. We also will continue a variety of investigations and litigation in the food industry. Our transportation activities will be directed at encouraging regulatory authorities to incorporate competitive considerations in their decisionmaking. An overall reduction in resources for this program reflects the Commission's decision to withdraw its authorization for subpoenas in the automobile investigation.

To provide additional guidance to those within our law enforcement jurisdiction the Commission recently agreed to further clarify the "unfair methods of competition" language of Section 5. This effort is designed to give the type of specific guidance the Commission provided late last year when it spelled out the legal and policy underpinnings of its consumer unfairness jurisdiction.

Consumer Protection

The Consumer Protection Mission budget reflects a renewed consideration of alternatives to rulemaking. As a result, resources for industry-wide rulemaking are reduced by 61% from the 1980 level. These reductions will not impair the Regulatory Analysis Program, through which the Commission will be better able to assess the economic impact of its proposals.

Our consumer protection efforts will focus on those sectors of the economy of greatest importance to consumers. Thus, for example, we will continue to monitor vigorously energy-savings claims for many products; we will examine whether certain market restrictions may unnecessarily increase prices and reduce the availability of routine health care services; and we will focus on reducing consumer injury from serious, undisclosed deficiencies associated with high cost, complex products. In addition, the Commission recently terminated its Over-the-Counter Drug Trade Regulation Rule proceeding, but will continue to scrutinize advertising for these drugs carefully to ensure the claims are substantiated. We also will maintain a firm enforcement presence with respect to our credit statutes, such as the Equal Credit Opportunity Act and the Fair Debt Collection Practices Act.

Economic Activities

The Economic Activities Mission guides and supports our antitrust and consumer protection law enforcement efforts in both case selection and development. Economists assess the cost and benefits of proposed antitrust and consumer protection law enforcement actions.

In 1982, the staff will develop new projects on such issues as alternative medical providers, the effectiveness of certain remedies in antimerger cases, and problems of predation with regard to new product entry. Additionally, further changes are being planned in the Quarterly Financial Report survey to reduce the burdens on small businesses.

Proposed Abolition of Regional Offices

I now would like to address the issue of the Commission's regional offices. OMB has proposed that the Commission's ten regional offices be closed. In our view, closing all of these offices would cause serious losses to the public, to businesses, especially small businesses, and the state and local officials served by these offices.

The importance of regional offices can be illustrated by a review of recent activities. In fiscal 1980, the redress we obtained exceeded our annual budget. Nearly all this money came from cases developed in the regional offices. In the past three years, for example, regional offices have obtained over $100 million in redress, enough to offset their total operating costs for at least the next seven years.

Many enforcement actions begin when area businesses or consumers affected by unlawful practices contact the regional offices. We believe that these matters, most of which have significant national impact, would not have been uncovered without the regional offices. For example, the Commission's case against major art supplies manufacturers, which resulted in a $1.2 million redress fund to public school systems, resulted from such a visit.

FTC regional offices also play a major educational role by helping businesses understand their rights and obligations under the law. Each year these offices respond to over 120,000 inquiries, and have numerous direct contacts with businesses and trade associations. For example, several regional offices recently held conferences for small businesses to provide advice on antitrust laws and consumer protection issues.

Closing the regional offices also would have a significant impact on state and local law enforcement. Our regional offices work closely with the state attorneys general, eliminating duplication of effort and expense. Many cases brought by state attorneys general have followed Commission actions handled by our regional offices. My full statement illustrates this point.

The FTC has maintained a regional presence for over 60 years. The regional offices more than pay for their operations in pure monetary terms, and they also make substantial contributions to the Commission's overall law enforcement efforts. For these reasons, we urge that Congress allow us to preserve this proven and efficient regional presence.

I request permission, Mr. Chairman, to submit for the record a more detailed statement, and a review of our regional offices' productivity and contributions to the agency's law enforcement efforts.

REGIONAL OFFICE RECOMMENDATION

Senator WEICKER. Do you have a recommendation, an alternative to what has been proposed here vis-a-vis the regional offices?

Mr. CLANTON. To put us back in a position where we can maintain a viable regional office structure, while still absorbing some budget cuts, 97 work years would have to be restored to the Commission's budget.

Senator WEICKER. What are we talking about in terms of this budget in terms of money?

Mr. CLANTON. About 60 percent of the regional offices——

Senator WEICKER. If we don't start phasing out, how much is this budget concerned with?

Mr. CLANTON. As far as the 1982 budget is concerned, to bring those 97 work years back, we are talking about $2, $2½ million. I would just add, the 97 positions in essence would bring the planned 60-percent reduction by the end of 1982 back to the order of 17 to 18 percent, which is what the administration proposed across the board. So it would still mean a reduction, but it would be considerably less than what is now planned.

Senator WEICKER. Let me just get this clear so we have it for the record now. Specifically then the administration's budget is predicated on the fact, as I understand it, that they want to phase all of the regional offices out over a period of about 3 years.

Mr. CLANTON. That is correct.

REGIONAL OFFICE CLOSINGS

Senator WEICKER. First of all, do you think any regional offices ought to be closed?

Do you think that is sufficient in terms of number and allocation?

Mr. CLANTON. I think the major elements of the regional office structure certainly should be preserved. Indeed at this point, we are not in position to say there is any particular regional office that ought to be eliminated. Obviously, if we have to take a significant cut across the board, one of the factors is, how do we spread that around? Do we spread it evenly across the board? We are not in the position to make that precise assessment at this point. Indeed, what we have urged is even if we have to take a cut, we have some alternatives to determine how that can best be allocated.

Senator WEICKER. Then let me ask you, on what basis, since apparently you are not in position to decide what ought to be closed, and I understand your overall position, which is they ought to be kept, but on what basis did OMB make this decision?

Mr. CLANTON. As I understand it, their principal basis for proposing that we eliminate the regional offices is their feeling that some of the activities, some of the matters handled by those offices are national in scope. As a result, why couldn't they be handled as well as in Washington as in Chicago, Atlanta or someplace like that? There are certainly cases handled between regional offices that deal with national industries, national companies, no question. The example that I pointed out in my statement of the art supply and crayon manufacturers, clearly those are national companies. On the other hand, that matter was brought to our regional office's attention by some people who were directly affected by those actions. The regional office did a good job of handling the matter. Not only did we get redress, but we handed the matter over for further criminal investigation by the Department of Justice.

On the other hand, there are numerous small investigations that those regional offices handle which are are peculiar to their localities, far more than may be evident from some of the highly visible matters. Indeed, there is an enormous amount of informal contact that never rises to the level of litigation, but is highly valuable in terms of helping businesses, helping consumers.

The figure I mentioned of 120,000 inquiries, I believe, is limited to written inquiries and doesn't even include equally numerous telephone calls and other direct contacts. These occur much more often in the regions than at headquarters. Without any regional presence, we would be unable to satisfy those kinds of concerns if we had to deal with them strictly from Washington.

I think even though there are national cases that arguably could be dealt with back in Washington, there are an enormous number of issues raised in localities throughout the Nation.

Senator WEICKER. I understand. I don't know if it is with your concurrence, but it is my observation that the philosophy of this administration seems to be to get it out of Washington. Am I wrong on that, out of Washington, not have the decisions made in Washington? That would be the block grants philosophy which should be done now at the State level. Here is a program, here is an agency that relies to a large extent on representation of the consumer, wherever that consumer happens to be, and also, as you indicated, small business, not just the individual, but small businesses. It seems to me just as a matter of physical convenience, you work better out of Washington, being able to relate first hand to the problems that arise, or the opportunities. But basically, as I understand it, and it was not a matter of any sort of substantive decision made on their part relative to whether or not these units were performing proper functions, is that correct?

Mr. CLANTON. I think that is right. OMB in effect said, "We want the agency to take a budget cut and here is an area which we think is right for a cut, because we think some of these activities could be handled back here as well as out there, with the duplication of overhead, et cetera, why do we need all those regional offices?" I think that is a mistaken assumption about the role they play. From our experience, it would be enormously difficult to have one body here in Washington attempt to deal with the kinds of problems we have across the country, at anywhere near the level of effectiveness as under the present system.

Senator WEICKER. Have you expressed your views to the administration?

Mr. CLANTON. We have. The Commission sent a letter signed by all the Commissioners shortly after we had gotten word that they were going to seek the closing of our regional offices and the elimination of our entire antitrust authority. We raised both these issues. As you know, the administration did back away on the antitrust issue. However, they felt they wanted to go ahead with the proposal to eliminate the regional offices. We did express our views at that time.

REGIONAL OFFICE RESOURCES

Senator WEICKER. We have to prepare this appropriations request for the full committee. What specifically do we put in there if you want to maintain the regional offices as they are? What is the request then in terms of personnel and in terms of dollars?

Mr. CLANTON. Let me ask Chris White, our Executive Director, to give you a little more detail on that. I gave you the general outline of the positions. I will ask him to respond.

Mr. WHITE. The chairman covered the basic issues that need to be addressed, the restoration of the positions necessary to keep the regional structure at an efficient operating level as well as the funding of those positions.

Senator WEICKER. Can you repeat that for me? What are we talking about people-wise? We are talking about the 1982 budget?

Mr. WHITE. That is correct, in fiscal 1982, the figures would be 97 positions and $2.5 million.

Senator WEICKER. Ninety-seven positions and $2.5 million?

Mr. WHITE. That is correct.

Senator WEICKER. The request is a decrease of 208 positions, $2.9 million. Are you telling me that the remaining $442,000 can be attributed entirely to 208 minus 97?

Mr. WHITE. No; they are not directly linked. What we have done is calculated the increments, the additional need in terms of personnel and associated costs so as not to phase out the regions.

Senator WEICKER. Figuring if we don't add to the regional offices, keep them as is.

Mr. WHITE. No; it would still be a reduction, but it would not be a reduction of 60 percent as proposed by OMB. Our current regional position strength is 355 positions. For fiscal 1982, OMB has proposed a reduction from 355 to 142.

Senator WEICKER. What are you proposing?

Mr. WHITE. We are proposing that 97 positions be restored which, for 1982, would be, therefore, a reduction from 355 to 239.

It is still a significant reduction but it is one that will permit the Commission to continue a regional enforcement structure that is efficient and makes sense, albeit at a reduced level.

Mr. CLANTON. We proposed this, recognizing the fact we probably would have to live within some overall dollar amount reduction as suggested by the administration. We will attempt to deal with that kind of overall budget cut and still provide a sound regional structure. That is why we want to add back 97 positions.

DISCUSSIONS WITH OMB

Senator WEICKER. What kind of discussions were held on matters of substance between OMB and the Commission prior to OMB or the administration issuing its budget?

Mr. CLANTON. There was no formal substantive communication from the administration to the agency. We first got advance notice of what they were planning or considering for our budget, that was the basis for our responding. That is typical of the normal process where they will indicate the figure they are recommending and we have a right to appeal that figure. During that appeal process we sent a letter back. At that time, the recommendation on the regional office and the recommendation on the antitrust situation was very brief, simply the dollar amount and positions they proposed to reduce. There was no detailed explanation. I can ask Chris to respond further in terms of additional discussions on an informal basis, but on a formal basis, we don't have anything other than what is reflected in the materials accompanying the President's budget.

Mr. WHITE. In September, the Commission submitted to OMB, as it does every year, its proposed budget for fiscal year 1982. In February, we received what they refer to as the passback which was a basis for the Commission's appeal, as the OMB procedures permit.

There was no substantive discussion of that passback. We asked questions to be sure we understood what they were proposing, but the basis for it and rationale was not discussed at great length with us.

Mr. CLANTON. As I understand it, Mr. Chairman, their concern was duplication at the regional offices, performing functions that the headquarters can perform. I think that is briefly set out in their explanation of the budget terms they submitted. That really is the essence of the explanation we have at this point.

Senator WEICKER. If you eliminated the antitrust function, which, as you say, has been resolved, if you eliminated the regional offices, what does that leave the FTC with?

Mr. CLANTON. Headquarters focusing strictly on consumer protection matters, if that were the case. Roughly our enforcement activities are evenly divided between consumer protection and antitrust. About one-half the resources on each side. In effect, what you would have had is an agency who would have been cut back ultimately by, I have forgotten the exact percentage——

Mr. WHITE. Forty percent.

Mr. CLANTON. Forty-five to fifty percent. The Bureau of Economics on the enforcement side would be cut about one-half. We obviously have a Bureau of Economics and other support functions. About one-half of our resources are in antitrust and the other half in consumer protection.

Senator WEICKER. Do you think you are getting the message maybe somebody doesn't want the FTC, period?

Mr. CLANTON. Well, it is difficult at this stage to assess. Certainly there were some strong feelings expressed about the particular functions on the antitrust side. I know their justification is also duplication. We have the Department of Justice enforcing antitrust, why do we need the FTC?

I was pleased they did not pursue the antitrust issue, but we are still concerned with the regional offices.

Senator WEICKER. I am concerned also because it is not that I haven't had my differences with the Federal Trade Commission, that is not the criteria as to whether you are doing a good job or not. You have a clear-cut function and you have a mandate here. I am a little bit concerned. I think what worries me is some of the same concerns I expressed with the ongoing disputes between the Congress and the Federal Trade Commission, that is, we step into some of these quasi-judicial matters in a legislative way and try to influence the outcome by the funding process. I am not sure that is public policy. I am not so sure what exists is the way to go at it.

In the absence of knowledge of substance, it might be maybe the regional office doesn't provide a particular use. You think it does. You are more well versed in that than I am.

Mr. CLANTON. It certainly is an appropriate issue for the Congress to look into, likewise on the antitrust issue.

PUBLIC PARTICIPATION FUNDS

Senator WEICKER. How about public participation funds? I find it difficult to believe in that sometimes, not in the sense they shouldn't be there, I think it is in the allocation of those funds that I have had disagreement. As I understand, they are knocked out completely.

Mr. CLANTON. In 1982, that is correct. We will still be funding this year, roughly $50,000. That is down from a peak of a couple years ago of around $500,000. We are not doing as many rulemaking proceedings. The ones we are doing are winding down to the end of the line. We probably still could use some funds in 1982, although obviously not at the levels of past years.

Senator WEICKER. I will be anxious to have suggestions in the sense of how the allocation of those funds could be improved. I think there ought to be some funds for public participation.

Mr. CLANTON. I can make a couple observations in response to that. First, Congress took steps last year, to place limits on how much one recipient can get. I think that reflected what the Commission started to do itself in attempting to keep the funds widely disbursed, giving to as wide a group of participants as possible, not just those located solely in Washington. That approach I think, has been reflected in the recent allocations the Commission has made.

The second point is one that I think is of legitimate concern, that is, not giving all these funds to the national, the most recognized consumer groups. Instead we should not only spread available funds among national and State consumer groups, but also providing funds to small business groups. I know in the last 2 or 3 years a considerable portion of funds have been given to small business groups, small trade associations and the like that did not receive those funds in early years. It seems from our experience they were just as often as deserving as other groups, either they didn't have exactly the same position as major associations, or they had a different angle, different approach that they were not able to present effectively without reimbursement. We found that proved to be very valuable and beneficial in terms of the end result. So that I think we have had, based on our experience and based on the guidance we have gotten already from Congress, a strong desire to try to provide funding on a broad-based basis to many different kinds of groups instead of trying to concentrate them on those that will be most likely to be active, those who are headquartered in Washington and are clearly in position to keep abreast of these things.

We should try to reach out and make sure everybody has access and opportunity to those funds across the country.

Senator WEICKER. I agree.

Mr. CLANTON. And the distribution side of the program is a key aspect to it.

Senator WEICKER. I agree with you. I pick up my newspapers every day now and I see a greater and greater concentration of the economic climate in our country, fewer and fewer speaking for any particular area of the Government. I worry about that consumer without more ready access to your agency. It is a matter of concern now. It is great if you are Chrysler and you can hire lawyers, accountants, everybody else. These small businesses out here cannot.

I think both you and I recognize that public participation funds were abused in the past, I don't think the concept is bad. Maybe through the trial and error method it has to be refined. Nobody is arguing that point, but if there was ever a time, as I say, where the big are getting bigger and stronger, I don't mean just with this administration, I go back to ever since I have been here, since 1970, since 1968, I have seen this take place.

I think now some of these safeguards that were put in there are going to be very much needed. This is not the time to abandon it.

In this budget you have what for the public participation fund?

RESOURCES FOR PUBLIC PARTICIPATION

Mr. CLANTON. There is nothing in 1982. In 1981, we are going to be using about $50,000 on public participation, about $60,000 in 1980. In 1982, it depends largely on some matters that might or might not go ahead to rulemaking. At the outside, I would say the figures are around $150,000 maximum we could use. It probably would be somewhat less than that. It is very difficult to give you a precise figure, but the outside will be in the $150,000 range. That is higher than the figure I gave you for the current year, $50,000. Part of the reason why we were up to $500,000 one year and way down to $50,000 another is the ebb and flow of rulemaking. There are several rulemakings right now where the hearings have been completed. Hearings are part of the process where participation is most likely to be expensive. Several of those proceedings have reached the end of the hearing stage and staff is going back and preparing the evidence, putting it together, or the rules have come up to the Commission for review. Obviously there is no reason for substantial public participation funds at that point.

That is one of the reasons why the funding now proposed is at a higher expenditure level than it has been in the past 2 years. There still will be the opportunity and the need for funds if we continue ahead in some of the possible rulemakings down the road.

As I indicated in my statement, generally, our rulemaking activities are going to be on the downward side. There are a lot of those proceedings in the mill now. Some of them have been resolved, some still have to be resolved. There clearly are not going to be as many new proceedings in the future. So any need for public participation funds is inevitably going to go down, but would not be eliminated.

COMMISSION MEMBERSHIP

Senator WEICKER. What is the lineup here as far as the Commission is concerned? You are the Acting Chairman.

Mr. CLANTON. That is correct. There will be another vacancy occurring at the end of this month, on April 30. Commissioner Pitofsky is leaving us as of that date. An additional potential vacancy will be available with the expiration of Commissioner Dixon's term in September of this year. Those are the two vacancies that will arise this year.

Senator WEICKER. A chairman will be named for one of those vacancies.

Mr. CLANTON. Presumably.

Senator WEICKER. I very much appreciate your statement and your testimony.

ADDITIONAL COMMITTEE QUESTIONS

I have other questions which I will submit for the record for response to the record.

Mr. CLANTON. Fine.

[The following questions were not asked at the hearing but were submitted to the Commission for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

REGIONAL OFFICE PROPOSALS

Question: What specifically is the Administration's proposal with regard to the Commission's regional offices?

Answer: The Administration has proposed closing the Commission's ten regional offices, over a three-year period beginning immediately, and ending September 30, 1983. The Administration has proposed reducing the regional office strength by 20% in fiscal 1981, 40% in fiscal 1982, and the remaining 40% in fiscal 1983.

Question: Your statement indicates that you do not agree with this approach. Why?

Answer: The regional offices have proven themselves to be successful partners in the Commission's law enforcement program. They have been responsible for over $100 million in consumer redress in the past three years; they have provided a place for businesses, state and local officials and citizens to go with their problems, and in turn receive a direct, informed response; they have played a major educational role by helping businesses understand their rights and obligations under the law; and they work closely with state attorneys general to allow the FTC and the state offices to run effective enforcement programs without duplicating effort or expense.

Question: You're not suggesting the regional offices should take no cuts, are you?

Answer: No. The Commission recognizes the need to reduce federal spending, and is willing to accept reductions in its regional offices. We believe, however, that the Agency should be allowed to determine the most effective way to distribute these cuts.

Question: If we were to agree with you rather than the budget as submitted, how many dollars and positions would we have to add back?

Answer: The Commission's goal is to maintain a sound regional office structure consistent with across-the-board budget economies of approximately the magnitude proposed by OMB. A restoration of 97 workyears and $2.5 million for fiscal 1982 would permit the reduction in the regional offices to be proportional to, instead of much greater than, reductions at headquarters. A smaller dollar restoration would, of course, require corresponding readjustments throughout the agency.

Question: How many regional offices do you currently have?

Answer: There are 10 regional offices (Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, San Francisco, Los Angeles, New York, and Seattle).

Question: Under the Administration's proposal, would you have to have layoffs in fiscal 1981 in the regional offices? in 1982?

Answer: We do not anticipate having any layoffs in the regional offices in 1981, should the Administration's proposal be accepted by the Congress. In both fiscal 1981 and 1982, continued hiring curtailment and attrition will reduce full-time permanent employment. In 1982, however, it may be necessary to lay off approximately 45 temporary and part-time employees in the regional offices, as well as begin closing the regional offices to meet the 1983 goal proposed by the Administration. Should the Administration's proposal prevail, we anticipate that full-time permanent employees in the regional offices would be offered other positions at headquarters, rather than being laid off.

Question: Can you briefly describe some of the significant regional office accomplishments during the last few years?

Answer: Yes. The opening statement contained a listing of significant regional office accomplishments for fiscal years 1978 through 1981. A brief summary follows:

- Over $100 million in redress (e.g., Ford, Chrysler, Bankers Life)
- First antitrust redress case, (Binney & Smith, et. al.--crayons) $1.2 million distributed to public school systems.
- Chrsyler, Ford, and GM repossession cases (retained profits or surpluses from the sale of repossessed vehicles) estimated several million dollars redress.
- MacMillan, Inc. and LaSalle Extension University--vocational school system required to disclose information about past students experience, substantial redress.
- General Motors (engine switch case).
- H. N. Singer ("Hot Box Products") first franchise rule case, at least 16 investors allegedly defrauded of as much as $100,000 each.
- Bell & Howell--$1.2 million redress fund established for vocational school students.
- Levi Strauss - alleged vertical price fixing of sportswear.
- Interco - alleged vertical price fixing by maker of Florsheim shoes and London Fog raincoats.
- Boise Cascade - alleged receipt by Boise Cascade of illegal price discounts from major office equipment manufacturer in violation of Robinson-Patman Act.
- Times-Mirror - alleged discrimination in sale of retail display advertising linage in Los Angeles Times-Mirror newspaper.
- Rhinechem/Chemetron - successful federal court injunction of allegedly anticompetitive horizontal merger in organic pigments.

Question: How many people are in the regional offices?

Answer: Regional Offices are currently authorized 355 positions.

Question: What alternative plans have you developed for Regional Offices?

Answer: We have not yet finalized alternative plans for implementing the Administration proposal regarding the regions. If the Administration proposal is accepted by Congress, then major changes in the way we deal with the public and businesses would have to occur.

ANTITRUST BUDGET

Question: Earlier this year, the Administration proposed (then backed off) the elimination of your antitrust efforts (Bureau of Competition). Are you aware of any legislative proposals underway to accomplish this?

Answer: No. No legislation has been introduced as of this time.

Question: What would be the impact of the loss of this activity on small business for example? (Example for the record.)

Answer: The FTC's antitrust mission affects small business in three ways: 1) the FTC's antitrust enforcement is designed to give small businesses a fair opportunity to compete; 2) the FTC promotes the interests of small business through its competition advocacy program; and 3) the FTC undertakes research on the competitive problems of concern to small business.

1. The FTC enforces three antitrust statutes of importance to small business: The Federal Trade Commission Act prohibits "unfair methods of competition." The Robinson-Patman Act, for which the Justice Department has not assumed enforcement responsibility, prohibits several unfair business practices, such as price discrimination, which larger companies may use to the competitive disadvantage of small companies. The FTC also enforces the Clayton Act, which outlaws mergers which tend substantially to lessen competition.

The FTC has initiated a number of investigations and cases involving potentially unlawful restraints of trade and Robinson-Patman Act violations which may impede the ability of small businesses to compete and survive in the marketplace.

- The Commission's enforcement of the Clayton Act against anticompetitive mergers is aimed at keeping markets from being dominated by a few large companies because experience shows that such markets do not provide the benefits of competition to the consumer or the opportunity to compete to small businesses.

- In the last two fiscal years, the Commission has initiated 37 investigations involving violations of the Robinson-Patman Act. Currently the Commission has nine cases either in litigation or in various stages of settlement involving discrimination allegations.

- The Commission has addressed other alleged unfair restraints under Section 5 of the FTC Act, e.g., in the Los Angeles Times-Mirror case the Commission challenged a newspaper's advertising rates, alleging that they unfairly discriminate against small advertisers.

- In the last three years, the Commission has entered into 14 settlements in cases involving resale price maintenance, a restraint which limits the freedom of retailers to sell at prices they select. These cases have involved such industries as apparel, shoes, stereos and other recreational equipment, rugs and carpets, cookware and pet supplies, the products of which are widely distributed through numerous small retail merchants.

- The Commission has initiated 30 investigations in the last two fiscal years involving vertical restraints other than resale price maintenance, e.g., tying arrangements and territorial and customer restraints, which may unnecessarily limit the opportunities available to small business in supplying and distributing the variety of products most desired by consumers.

- The FTC generally focuses its antitrust efforts on areas of substantial importance to the pocketbooks of consumers and retailers. Consequently, the FTC has tended to direct its enforcement activities towards companies engaged in a substantial amount of commerce. For example, in 1977, 1978, and 1979, only 2.6% of FTC's competition respondents had sales under $10 million.

2. The Commission has advocated the competitive interests of small businesses before other government agencies, e.g.:

- Statements before the EPA and the California Air Resources Board regarding proposed regulations for automobile emission control system warranties which would have permitted automobile manufacturers to designate their own dealers as the only approved centers for warranty repairs. The Commission's comments pointed out the adverse impact this policy would have on independent repair shops and manufacturers of replacement parts;

- Intervention activities at the ICC and CAB designed to promote entry of new firms in the trucking and airlines industries;

- Comments filed with the Federal Home Loan Bank Board opposing a proposed regulation that could foreclose a significant data processing market to small, private companies.

3. The Commission has on-going programs of research (some in conjunction with the SBA) to study (1) imperfections in the capital markets which may unduly discriminate against small business, (2) strategies of diversified firms and their effects on small business, and (3) the effects of federal tax policy on small business. Many of the FTC's economic studies have contributed to the public's understanding of small business problems.

Question: Will the proposed budget affect your ability to answer complaints and respond to new market developments?

Answer: Antitrust enforcement is a labor intensive activity. Any cut in budget that affects personnel necessarily affects our work product. While we can continue to operate effectively with a budget cut of 10-11%, these cutbacks obviously will reduce the number of complaints we can answer and the number of new investigations we will generate on the basis of market analyses. Reductions in resources devoted to planning activities will affect our ability to learn about and develop responses to new market developments. The Commission's revised FY-1982 program budget contains a breakdown of the impact of the reduction.

Question: Do you have on-going liaison with the Antitrust Division? Is there overlap and duplication?

Answer: We have long had a very effective liaison arrangement with the Antitrust Division. This was one of the matters studied by the Senate Committee on Governmental Affairs in its Study on Federal Regulation (95th Congress, 2d Session, Document No. 95-91, December, 1977). Volume Five of the Study contains a lengthy discussion of the liaison arrangement, concluding that "Generally, the liaison arrangement appears to have worked well in accomplishing its principal purpose: avoiding outright duplication of effort. Since 1948 there have been no known instances in which the two agencies have filed suit against the same party at approximately the same time." (page 237). "The Committee could find no harassment or clearly unwarranted burdens placed on respondents because of the dual enforcement structure" and "In the vast majority of cases, an honest appraisal of agency experience, capabilities, and resources would result in an appropriate decision on a clearance request." (page 238).

The 1977 Senate Study examined a number of criticisms of the systems of shared antitrust enforcement and concluded (as have many earlier studies) that the system works well.

AUTO INDUSTRY INVESTIGATION

Question: I understand you have limited the investigation of the domestic auto industry. What is the status of the issue at this point?

Answer: On March 4 the Commission voted to withdraw the staff's authority to use subpoenas in the investigation, and consequently the staff withdrew draft subpoenas that had been sent to eight domestic and foreign auto companies. Since that time, the Commission, upon recommendation of the staff, has closed the investigation.

Question: What factors did you consider in making this decision?

Answer: The decision to close the investigation was based principally upon the fact that the extent of market power previously enjoyed by the leading domestic automakers has been substantially eroded by foreign competition in recent years, and the fact that the industry is in a period of transition which makes predictions of future competitive concerns very difficult. In addition, other specific practices, such as exclusive dealerships, the use of vertical integration and the employment of rapid style change, seem less significant in today's industry than they may have been a few years ago. Accordingly, it was felt that continuing the broad-based investigation was no longer an appropriate use of scarce Commission resources.

CHILDREN'S ADVERTISING

Question: I understand the staff has recommended terminating the Children's Advertising proceeding. Is that correct?

Answer: Yes, on March 31, 1981, the staff submitted to the Commission its report recommending termination of the rulemaking proceeding.

While the staff found from its review of the rulemaking record that certain problems exist with regard to child-oriented television advertising, the staff concluded that workable solutions to those problems cannot now be accomplished by rule.

Question: Has the Commission acted on the recommendation?

Answer: The Commission has placed the staff's report and recommendation on the public record for a 60 day comment period. The Commission will not take final action until it has had an opportunity to review those comments.

Question: What's your personal view on how the Commission should respond to those recommendations?

Answer: As you know, Mr. Chairman, I had reservations about the legal and policy underpinnings for aspects of the staff's original rulemaking proposal. The rulemaking process itself has now amassed evidence that has led the staff, after a careful analysis of the record, to recommend termination of the proceeding. The Commission has published this recommendation for comment. After the comment period ends, I and my colleagues will review the staff recommendation and the public comments and reach a decision.

CEREALS CASE

Question: We've heard a great deal about the Commission's so-called shared monopoly case involving the cereal companies. What is the status of that case?

Answer: The trial of the case has been completed. The trial record includes over 40,000 pages of transcript. Counsel have submitted proposed findings of fact and conclusions of law to the Administrative Law Judge, who will issue an initial decision. Any party may then appeal the initial decision to the Commission.

An ancillary fact-finding inquiry into certain procedural issues related to the retirement of the first Administrative Law Judge assigned to the case is being conducted.

Question: How do you respond to charges that the Commission is proposing to breakup these companies on the basis of a faulty theory of law?

Answer: It would be inappropriate for the Commission or any Commissioner to respond to this question, inasmuch as it relates to the merits of

Docket No. 8883. A response to the question prepared by the Bureau of Competition is contained in an attached letter from the Bureau.

Question: What is your reaction to legislative proposals to halt the progress of the Kellogg case?

Answer: The Commission has previously been asked by Senator Packwood to state its views on the legislation in question, and is presently in process of preparing a response. It should be completed shortly, and the Commission will be pleased to forward its views to the Appropriations Committee as soon as possible. The views of the Bureau of Competition on the proposed legislation are stated in the attached letter from the Bureau.

May 15, 1981

The Honorable Lowell P. Weicker, Jr.
Chairman, State, Justice, Commerce, The
Judiciary and Related Agencies Subcommittee
Senate Appropriations Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

At the April 21, 1981 hearing before your subcommittee on the Federal Trade Commission's 1982 appropriation, the Commission was asked to respond to various questions, among which were three (numbers 19, 20 and 21) relating to Kellogg Company et al., FTC Docket No. 8883, and to proposed legislation that may affect that litigation. The Kellogg matter, as you know, is presently in adjudication; hence it would be inappropriate for the Commission to answer any question (or portion of a question) that relates to the merits of the case. Question 20 addresses the merits; in addition, some (though not all) of the considerations relevant to question 21 involve the merits of the case, and the answer to question 19, while itself concerned only with procedural matters, is relevant to the response to question 21. Consequently, as Assistant Director of the Commission's Bureau of Competition in charge of the Kellogg litigation, I am submitting this letter in response to the three questions referred to above. I would emphasize that the following material (some portions of which may cover subjects that would not be inappropriate for Commission response, and hence may also be covered in the Commission's answers to the subcommittee's questions) has not been reviewed by the Commission and does not necessarily reflect the views of the Commission or of any individual Commissioner.

Question #19: We've heard a great deal about the Commission's so-called shared monopoly case involving the cereal companies. What is the status of that case?

Answer: The trial of the Kellogg case before the Administrative Law Judge has been completed and briefs have been filed by all parties. During the course of the trial, the cereal companies and counsel supporting the complaint had the opportunity to argue all issues, both substantive and procedural.

The Commission issued its complaint in 1972. Pretrial proceedings extended over the next four years, with the respondent companies exercising their rights to discovery and to challenge various aspects of the case by motion. The trial commenced in 1976 and eventually resulted in some 40,000 pages of transcript (much of which was elicited by the respondents) and about 3,000 documentary exhibits. This substantial record contains evidence on a great many aspects of the cereal industry, as well as the analyses of eminent economists on many important issues.

The numerous contested issues of fact and law which developed during the trial will initially be resolved by the Administrative Law Judge, whose decision is due in October 1981. The Commission will then review that decision in light of the record in the case and issue its final order. If the Commission finds that there was a law violation, that decision can be reviewed by a United States Court of Appeals and, ultimately, by the Supreme Court upon a petition for certiorari.

A collateral fact-finding inquiry into certain procedural issues relating to the retirement of the administrative law judge who initially presided over the case is still in progress. An administrative law judge not in the employ of the Commission will preside over this inquiry. In testimony on March 12, 1981, before the Commerce, Justice, State, The Judiciary and Related Agencies Subcommittee of the House Appropriations Committee, Acting Chairman Clanton indicated that he was sure the Commission would not decide the substantive antitrust issues in Kellogg before resolving the procedural issues involved in the collateral inquiry.

Question #20: How do you respond to charges that the Commission is proposing to break up these companies on the basis of a faulty theory of law?

Answer: The answer to this question is incorporated in the answer to Question 21, which includes a description of the legal theory underlying the Kellogg case. See, especially, Sections 2a and 2b of that answer.

Question #21: What is your reaction to legislative proposals to halt the progress of the Kellogg case?

Answer: The proposed shared monopoly moratorium legislation (S. 682) raises three principal concerns. First, the legislation is specifically designed to interfere with the accepted processes of litigation by halting in mid-course an ongoing adjudicative proceeding before the facts have been established or any decision on the merits has been reached by the Commission. Second, the legislation is entirely unnecessary. The Commission's case against the cereal companies does not seek (as proponents of the legislation have suggested) to make mere possession of substantial market shares by a few firms a violation of the antitrust laws; rather, it includes a great deal of evidence respecting alleged anticompetitive practices and has firm roots in existing antitrust law and in generally accepted economic theory. Indeed, the Commission has no cases pending which seek to establish liability solely on the basis of market concentration. Third, the language of the legislation could reach well beyond the specific purpose for which it was proposed, to affect actual or potential antitrust initiatives dealing with a wide range of recognized anticompetitive conduct.

1. The Proposed Legislation Would Interfere with the Accepted Processes of Ongoing Litigation

Despite its possible breadth, S. 682[1] is aimed principally at one case—the Kellogg case—which is presently in adjudication. Its purpose is to halt that case, even though (1) neither the facts at issue nor the application of the law to those facts has yet been determined by the Commission, and (2) the respondents are protected by all the guarantees of due process of law.

For more than four years, pursuant to established procedures, the parties to the litigation have created a thorough record concerning all relevant facts about the cereal industry and the effects of the respondents' allegedly unlawful conduct. However, since neither the Administrative Law Judge nor the Commission has yet ruled on the pending issues of fact and law, any projections concerning the outcome of the litigation are at the present stage of the proceeding necessarily speculative, and hence an uncertain basis for the proposed legislation.

As I have noted, the case is currently before the Administrative Law Judge for decision. The Judge must review the testimony and exhibits presented in the case, as well as established antitrust precedents, and prepare by early Fall an initial decision containing his findings of fact and conclusions of law on the many contested issues raised by the parties. If he finds that the respondents have violated the law, he may include in his order all, some, or none of the remedies proposed by counsel supporting the complaint. If in reviewing the Judge's decision the Commmission determines that a violation has occurred, the respondents may appeal to a United States Court of Appeals and, if unsuccessful, may seek certiorari from the United States Supreme Court. During the trial the respondents have had an opportunity to raise and argue any and all contentions concerning the substance of the case and the procedures associated with it; and they will, of course, be able to pursue such contentions before the courts should a law violation be found.

In short, the trial in the Kellogg case is over, and all that remains is the process by which the Commission and potentially the courts will determine the outcome of the case. The respondents have enjoyed and will continue to enjoy all the rights and protections of any litigant, including the right to judicial review of any adverse Commission decision. And should such a decision be issued by the Commission, there will be a full opportunity for Congress, as well as the courts, to review the merits of the case, including the facts found to exist and the legal theory actually applied by the Commission.

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[1] A companion bill, H.R. 2509, has been introduced in the House of Representatives.

2. The Arguments In Support of the Proposed Legislation Are Based on a Misperception of the Kellogg Case

Four arguments have been made in support of legislation to stop the Kellogg case: that the Kellogg case is a "shared monopoly" case in which liability is based solely on market concentration; that there is no statutory or case law foundation for the case; that the theory of the case would render as much as one-third of the nation's economy unlawful; and that the Justice Department made an extensive search for "shared monopolies" but could find none. Each of these arguments is wrong, mainly because each is based on a fundamental misperception of the nature of the case.

a. The Nature of the Proceeding

Proponents of the shared monopoly moratorium legislation argue that the legislation is necessary because the Federal Trade Commission is seeking to break up the cereal companies based on a "shared monopoly" theory of antitrust law. They have described the theory as one holding that Kellogg, General Mills and General Foods did not have to conspire to fix prices, engage in collusion, or otherwise directly act to reduce competition in order to violate the antitrust laws. Instead, it has been said, the theory asserts that a small number of firms may violate the law simply by possessing substantial market shares in a concentrated industry. The Kellogg case, however, does not involve "shared monopoly" in this sense of the term. In addition to evidence of high concentration and monopoly-level profits, the record in the case includes very extensive evidence of collusive and cooperative conduct among the cereal companies that arguably enabled them to avoid competition with each other. This comprehensive evidence goes far beyond mere concentration.

The cereal companies are charged with a tacit conspiracy to jointly exercise—or to "share"—monopoly power by avoiding competition with each other. There is evidence that they suppressed price competition through collusive price leadership and suppression of discounts and "cents-off" labels, that they suppressed the use of in-pack premiums (toys packed in the boxes for children), the production of private label cereals and other forms of competition, and that they exchanged competitively sensitive cost information. Proof of such a conspiracy does not depend on evidence of express communication by the companies. It can be shown by a pattern of noncompetitive conduct and persistent monopoly-level prices and profits. In this connection there is evidence that the monopoly power thus allegedly gained by agreement among the firms in the cereal industry and the monopoly pricing it is believed to have made possible have endured for many years. The alleged monopoly overcharge paid by consumers—and contributing to inflation—has been calculated to amount to nearly 15% of the total price paid by consumers, or about $100 million per year.

An aspect of the economic analysis presented during trial admittedly is that persistent high concentration provides the opportunity and incentive to engage in tacit conspiracies or cooperative conduct to avoid competition and to charge monopoly prices. But the validity of this point has been acknowledged by economists, and by the courts, for decades. The most recent Supreme Court antitrust opinions rely on it, as do numerous economic writings. E.g., United States v. United States Gypsum Co., 438 U.S. 422 (1978); R. Posner, Antitrust Law: An Economic Analysis (1976). Even the cereal companies' witnesses have testified that, other things being equal, the probability of tacit collusion increases with the level of concentration.

Certainly, the Kellogg case is not a run-of-the-mill price-fixing case. It is an important litigation dealing with pervasive and persistent industrywide practices, and it differs from many other antitrust cases—even major industrywide cases—in two principal respects. First, by contrast with most conspiracy cases, it is alleged that the companies achieved an understanding designed to avoid competition without express communication, except on some subsidiary matters. However, liability based on a tacit conspiracy of this nature would not be unprecedented; an earlier example of a similar tacit conspiracy was found by the Supreme Court in the tobacco industry. American Tobacco Co. v. United States, 328 U.S. 781 (1946). Second, counsel supporting the complaint have argued that even if the companies' conduct cannot technically be characterized as an "agreement" (whether explicit or tacit) violating the Sherman Act, the level of cooperation among the companies, which enabled them to achieve the practical equivalent of an actual agreement, constituted an unfair method of competition in violation of Section 5 of the FTC Act. It is well established that methods of competition may be held to be unfair within the meaning of the FTC Act when they conflict with basic antitrust policies or standards of conduct, regardless of whether they technically violate the Sherman Act or the Clayton Act.[2] And even in connection with this aspect of the case, the legal theory is by no means limited to the assertion that the cereal industry is highly concentrated. Like the tacit conspiracy claim, this alternative theory relies in addition on extensive evidence of cooperative conduct and on substantial evidence that monopoly power was actually achieved.

Quite apart from the specific precedents noted above, the antitrust laws provide well-recognized general criteria for judging whether conduct is illegal. Antitrust violations of the type involved in Kellogg may be found, for example, only where the conduct in question adversely affects prices or other aspects of market performance. In this case, the liability of the cereal companies depends not only on whether the evidence shows that their business methods involved cooperation or tacit agreement, rather than normal independent business judgment, but also on whether prices may be shown to have actually been increased as a result. The extensive evidence outlined above describing industry practices, prices, and profits focuses on subjects that are familiar elements in antitrust analysis based on established case law.

b. Statutory and Case-Law Foundations of the Proceeding

Both the Sherman Act and the FTC Act form the basis for the Kellogg proceeding. That the Sherman Act is concerned with preventing monopolization and agreements to monopolize or to bring about other restraints of trade is of course fundamental antitrust law. Thus, the tacit conspiracy aspect of the Kellogg case is firmly rooted in the Sherman Act. In addition, a central focus of the FTC Act is on preventing monopoly power from being exercised by unfair competitive practices. The Congress that created the FTC wished to prevent all unfair practices that could produce such power, whether by collusion or otherwise. More specifically, Congress wanted to ensure that practices which were not then well developed, or even known, but which in the future could nonetheless unfairly interfere with competition, would be halted even if the courts were unwilling or unable to apply the Sherman Act. As has been noted, the FTC Act applies where basic Sherman Act or other antitrust policies are violated, regardless of whether as a technical matter there is an "agreement" as that term is used in the Sherman Act.

Judicial decisions supporting the Kellogg complaint are cited in detail in the post-trial brief filed by counsel supporting the complaint. The authorities relied on include such cases as United States v. Container Corp., 393 U.S. 117 (1968) (tacit agreement shown by history of reciprocal favors in providing information), and United States v. Masonite Corp., 316 U.S. 265 (1942) (tacit agreement resulted from adoption of practice after discovery that others in industry were doing the same thing). One case in particular is noteworthy. In American Tobacco Co. v. United States, 328 U.S. 781 (1946), the Supreme Court upheld a decision that the three major tobacco companies had formed a tacit agreement to monopolize the tobacco industry. There was virtually no evidence, however, of a specific plan to monopolize or of any communication on the subject. Rather, the agreement developed over the years through the companies' course of conduct, and the evidence of agreement was the pattern of conduct itself. The tobacco industry was described by one of the cereal company expert witnesses as one of the best examples of collusive price leadership he had seen. By the criteria he applied, the cereal industry presents an even better example of collusive price leadership.

In addition, complaint counsel have relied on several Supreme Court opinions which establish that the "unfair methods of competition" prohibited by the FTC Act are not limited to Sherman Act conspiracy, if a comparable anticompetitive result is achieved.[3] In fact, existing precedent might have permitted counsel supporting the complaint to argue that the individual adoption of particular practices by the three cereal companies with an intent to maintain noncompetitive pricing violates the FTC Act not only regardless of any proof of conspiracy but also regardless of proof that prices were actually raised. *Triangle Conduit and Cable Co. v. FTC*, 168 F.2d 175 (7th Cir. 1948), *aff'd by an equally divided Court sub nom. Clayton Mark & Co. v. FTC*, 336 U.S. 956 (1949). However, as noted above, the *Kellogg* record contains evidence that pervasive cooperation among the cereal companies was successful in maintaining monopoly price levels.

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[2] See, e.g., FTC v. Sperry & Hutchinson Co., 405 U.S. 233 (1972); FTC v. Brown Shoe Co., 384 U.S. 316 (1966); Atlantic Refining Co. v. FTC, 381 U.S. 357 (1965); FTC v. Beech-Nut Packing Co., 257 U.S. 441 (1922).

c. Charges that the Legal Theory on Which the Case Is Based Would Render Much of Our Economy Illegal

It has been argued that the *Kellogg* case is based on a legal theory that would make as much as one-third of American industry illegal. This alleged theory is that high concentration is *per se* illegal. As is pointed out above, however, this is simply not the legal theory of the *Kellogg* case. In fact, one of the cereal companies argued this narrow interpretation of the complaint to the Administrative Law Judge in 1974. In rejecting the argument, the Judge made it clear that the complaint is aimed not at concentration or high profits as unfair in themselves, but at specific practices which are allegedly anticompetitive.

If the true nature of the *Kellogg* case is recognized, the premise of the criticism that "one-third of American industry would be illegal" is shown to be unfounded. It seems highly doubtful that a pattern of pervasive non-competition enduring for decades, coupled with proof of persistent monopoly prices and profits, would be found in many other major industries.

d. The Justice Department's "Shared Monopolies" Inquiry

The validity of the "shared monopoly" case respecting the cereal industry has been questioned because the Justice Department has been said to have been unable to find even one "shared monopoly" case after reviewing numerous industries. The apparent inconsistency disappears, however, when the real nature of the Justice Department's efforts in this area is understood.

According to former Assistant Attorney General John Shenefield, the underlying concern of the Justice Department was indeed the very situation which is addressed in the *Kellogg* proceeding—tacit conspiracy among the members of an industry to avoid competition and to maintain monopoly pricing levels, with consequent injury to consumers. However, it would appear that the Department was looking for an enforcement approach to this type of situation that would not necessitate a trial of the length and scope needed for comprehensive analysis of an entire industry. In particular, the Department hoped that by seeking an overt conspiracy to adopt certain types of "facilitating practices" designed to aid non-competitive pricing, it would be "spared the difficulty of proving the existence of an agreement on the basis of pricing patterns and [would be] given the opportunity to obtain more readily enforceable relief in the form of an injunction against particular practices."[4]

The industries that were reviewed, therefore, apparently were reviewed for the purpose of finding a simplified enforcement route with respect to the "shared monopoly" problem, as the Department of Justice used that term. That no such case has been instituted thus does not mean that "shared monopolies" involving tacit collusion or anticompetitive cooperative conduct do not exist, or that they do not cause serious injury to American consumers; it may well indicate only what few if any antitrust lawyers would deny—namely, that antitrust enforcement designed to deal with such situations is difficult.

The alternative route to antitrust enforcement in "shared monopoly" situations involving tacit conspiracy to control prices, as Mr. Shenefield pointed out, is a proceeding that puts into the record all the facts about the industry necessary for a full, in-depth analysis of business practices and of pricing, profits, and structural conditions in the industry. This is difficult and time-consuming, but it is the approach that has been followed in the *Kellogg* proceeding.

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[3] These decisions include FTC v. Beech-Nut Packing Co., 257 U.S. 441 (1922) (cooperation, regardless of whether classed as conspiracy was unlawful because it offended the policy of the Sherman Act), and FTC v. Cement Institute, 333 U.S. 683, 701 n.19 (1948) (conspiracy not essential element of FTC Act violation). Any conduct which violates the Sherman Act also violates the FTC Act. FTC v. Cement Institute, *supra*.

[4] Memorandum dated May 26, 1978 from John Shenefield to All Section and Field Office Chiefs, Subject: Shared Monopolies. (Reprinted in BNA *Antitrust and Trade Regulation Reporter*, July 27, 1978 at F-1.)

3. The Language of the Proposed Legislation May Be Overly Broad

The general purpose of the proposed "shared monopoly" moratorium legislation appears to be to prevent a finding that a small group of firms have violated the antitrust laws simply by possessing substantial market shares in a concentrated industry. As has been pointed out earlier, there is no danger of such a finding in the *Kellogg* case and hence no need for the legislation in the first place. Furthermore, the language of the Bill is not clearly limited to preventing such a finding. First, the prohibition applies to any proceeding that *involves* one of the issues that would be specified in the legislation, even if the *proceeding* also involves other issues and other bases for decision. And second, the prohibition on Commission action might be open to a construction broad enough to prevent the Commission from proceeding against a fairly wide range of recognized antitrust offenses. As a result, while proponents of the legislation have said that neither the cereal companies nor any other industry would be exempted from traditional antitrust law, it is not clear that this projection will prove to be entirely accurate.

The legislation directs that no decision or finding shall be made in any proceeding under Section 5 of the Federal Trade Commission Act

> "which involves the issue whether a shared monopoly exists or whether two or more unaffiliated persons, without agreement and intent, have established or maintained a concentrated market structure . . . ."

The moratorium would continue until Congress determines that it is a violation of the antitrust laws "to establish or maintain a concentrated market structure or a shared monopoly" and "specifically defines the elements of such a violation." Since the legislation would apply to cases which "involve" the issues described in its provisions (regardless of how many other issues might also be involved), it would seem not merely to prohibit findings with respect to those issues in a given proceeding, but it evidently would impose a complete ban on decision-making in the entire proceeding.

More importantly, the Bill's reach is quite unclear for two separate reasons. First, it nowhere defines the key term "shared monopoly," and without such a definition it would be difficult (for reasons outlined below) for the Commission and its administrative law judges to know exactly what matters could not be decided. Second, an ambiguity is also created by the use of alternative formulations of the prohibition on Commission action. The Bill would prohibit the Commission from deciding a case which involves the issue of "whether a shared monopoly exists *or* whether two or more unaffiliated persons, without agreement and intent, have established or maintained a concentrated market structure . . . ." (Emphasis added.) From the use of the disjunctive "or," the logical inference to be derived is that the prohibitions are not coextensive. A proceeding involving the issue of "shared monopoly" could perhaps be deemed to include, for instance, any case in which a concentrated market structure is one—but only one—of several considerations to be taken into account in determining liability; under such a construction, the proposed legislation could sweep broadly across a highly refined aspect of antitrust analysis. The prohibition on cases involving noncollusive maintenance of a concentrated market, although arguably more specific, could also include a range of recognized antitrust offenses, since again, market concentration issues arise in a variety of contexts. The existence of a concentrated market is of general importance in antitrust analysis because it often means that the dominant firms in the market are able to exercise some degree of power to stabilize prices above competitive levels; however, it does not always mean that dominant firms have this power, nor is the acquisition or maintenance of such power always illegal. The determination of where market power exists and when its acquisition or maintenance is illegal is a central (and often complex) issue in antitrust law. Yet it is not clear that S. 682 could not be construed to apply to at least a great many cases in which this issue—*i.e.*, whether a concentrated market structure has been established or maintained--is raised.

The potentially broad sweep of the proposed legislation is illustrated by the following examples. First of all, since the legislation could proscribe decision in any case which involves a "shared monopoly" issue, it could conceivably apply even to cases in which monopoly power allegedly is "shared" by agreement; such cases would include, for example, those involving price-fixing that allegedly maintained prices at monopoly levels. The legislation might also be construed to preclude Commission action in various types of cases that do not involve agreement. For example, a series of acquisitions by two market leaders might establish or maintain a concentrated market without agreement between them, although traditionally, acquistion trends in the market have been found significant in determining the legality of a merger. See Brown Shoe Co. v. United States, 370 U.S. 294 (1962). Alternatively, the dominant firms in an industry might independently adopt the practice of negotiating exclusive supply contracts with their customers and thereby, without agreement between them, exclude competitors from the market; yet such practices were held unlawful in FTC v. Motion Picture Adv. Serv. Co., 344 U.S. 392 (1953), because they had "sewed up the market" for a few firms.

Although it is certainly not clear that these or other examples that could be cited would necessarily fall within the sweep of the proposed legislation, the above illustrations are sufficient, I believe, to point up some of the difficulties that might be raised by the imprecision of the proposed statutory language. The result might be that Commission action on a fairly wide range of antitrust cases would be precluded, or at least delayed by collateral litigation respecting the scope of the Commission's authority.

Conclusion

Antitrust enforcement has been refined and improved over a period of many years by Congressional oversight and legislation. However, the nation's antitrust policies would not be well served by a moratorium of the kind proposed in S. 683, which has been introduced with an eye to halting decision-making in one particular case even before it is known what facts have been established in that case or how existing law will be applied to those facts by the Commission. The legislation is entirely unnecessary, since the Kellogg case is not being litigated simply as a case involving a concentrated industry; rather, tacitly collusive and cooperative practices constitute the basic industry conduct that is alleged to be unlawful. And the Bill is drafted so broadly that it may call into doubt the ability of the Commission to issue decisions in a wide range of cases in which a concentrated market structure forms part of the relevant industry background.

I trust that the above information adequately responds to the questions concerning the Kellogg matter that were raised at the hearing. Please let me know if I can provide any additional information.

Sincerely,

Jonathan E. Gaines
Assistant Director
Bureau of Competition

May 29, 1981

Honorable Lowell P. Weicker, Jr.
Chairman, Senate Appropriations
Subcommittee on State, Justice,
Commerce, the Judiciary and
Related Agencies
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

A question for the record at our Appropriations hearings requested our "reaction to legislative proposals to halt the progess of the Kellogg case." In reply, we indicated we would provide the response to a similar request from Senator Packwood. That response has been completed and is enclosed.

Sincerely,

David A Clanton

David A. Clanton
Acting Chairman

27 MAY 1981

Honorable Bob Packwood
Chairman
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your letter of April 3, 1981, inviting the Federal Trade Commission's comments on S. 682, a Bill "To place a moratorium on decisions by the Federal Trade Commission in shared monopoly proceedings until the Congress establishes the existence of the violation and defines its elements."

The principal substantive provisions of the Bill are in the first section. Subsection (a) prohibits the Commission and any administrative law judge from issuing any decision that a violation of the antitrust laws has occurred, or any cease-and-desist order, in any proceeding under Section 5 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 45, [1] "which involves the issue whether a shared monopoly exists or whether two or more unaffiliated persons, without agreement and intent, have established or maintained a concentrated market structure in * * * [interstate or foreign commerce], until the Congress takes the actions specified in subsection (b)."

Subsection (b) declares that the moratorium imposed by subsection (a) shall remain in effect "until the Congress (1) expressly establishes that it is a violation of the antitrust laws for two or more unaffiliated persons, in the absence of an agreement and intent, to establish or maintain a concentrated market structure or a shared monopoly in * * * [interstate or foreign commerce]; and (2) specifically defines the elements of such a violation."

Section 2 provides that the Act will apply to any proceeding specified in the first section pending on March 15, 1981, or which is commenced after that date, and directs that any previously issued decision, findings, or cease-and-desist order issued in any such proceeding is to be vacated and is not to have any force and effect after the date of enactment. Section 3 declares that nothing in the Act is to be construed to place a moratorium on any proceeding before the FTC or antitrust cause of action other than those specified in the first section.

Although the Bill is phrased in terms of a "moratorium," or temporary delay, it is a permanent withdrawal from the Commission of authority to decide any matter within the scope of the first section, because the prohibition contains no time limit and, like any other repeal of particular authority, would remain in effect until Congress changed it.

According to the Bill's principal sponsor, Senator Riegle, the legislation would affect one Commission case, Kellogg Company

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[1] Section 5 of the FTC Act declares unlawful "unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce * * *."

et al., Docket No. 8883. 127 Cong. Rec. S 2765 (Mar. 26, 1981). Nevertheless, the proposed language is sufficiently vague that it could potentially affect other cases and investigations. Perhaps more important, regardless of how many matters would be affected by its enactment, the Bill would prematurely inject the legislature into an ongoing adjudicatory proceeding, and undermine the integrity of administrative and judicial procedures already designed to ensure that all agency adjudications are in accordance with law.

To illustrate our concerns, we shall briefly summarize the complaint in *Kellogg*, and describe the present status of the proceedings. Because the case is in adjudication before an administrative law judge, however, we want to emphasize that we have not assessed the underlying record, consulted with the Bureau of Competition (which is prosecuting the complaint), or reached any conclusions concerning the merits of any of the issues in adjudication.

The complaint in *Kellogg* alleges, among other things, that the relevant product market for purposes of the litigation is ready-to-eat cereals, that this market is highly concentrated, and that respondents, the four largest producers of ready-to-eat cereals in the United States,[2] have engaged in a variety of actions, in violation of Section 5, which have maintained this allegedly high concentration. The complaint charges that through the challenged methods, acts, and practices, respondents, individually and in combination, are maintaining a highly concentrated noncompetitive market structure; they are sharing and exercising monopoly power in, and monopolizing, the production and sale of ready-to-eat cereal; and they have raised barriers to entry of the market by unfair methods of competition. The complaint also asserts that, by means of these alleged practices, respondents have, individually and collectively, established and maintained artificially inflated prices for ready-to-eat cereals and obtained profits substantially in excess of those that they would have obtained in a competitively structured market.

The respondent companies have denied these allegations and, as noted above, the case is now in the process of adjudication as required by the Administrative Procedure Act (5 U.S.C. §§ 554, 556, 557), the Commission's Rules of Practice for adjudicative proceedings, 16 C.F.R. Part 3 as amended, and Section 5 of the FTC Act. The record of the case includes more than 40,000 pages of transcript and several thousand pages of exhibits. Counsel have submitted more than twenty volumes of proposed findings of fact, conclusions of law and replies to proposed findings and conclusions submitted by other parties. The record is now being reviewed by the administrative law judge, who is directed by the Commission's Rules of Practice and Procedure to write an initial decision "based upon a consideration of the whole record relevant to the issues * * * and * * * supported by reliable, probative and substantial evidence." 16 C.F.R. § 3.51(b)(3). The parties will be able to obtain review of the initial decision by the Commission, which will independently review the entire record, and, taking account of the initial decision, make its own determination whether any of the complaint allegations should be sustained and, if so, whether any relief should be ordered. 5 U.S.C. § 557. If the Commission issues an order to cease and desist, the decision would be subject to review in a court of appeals and the Supreme Court, for legal and evidentiary sufficiency, and the Commission's decision could not become effective until after judicial review was completed. FTC Act, § 5(c), (g), 15 U.S.C. § 45(c), (g); Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Because there already exists a carefully structured statutory process of administrative adjudication and judicial review, we believe that legislative intervention would be premature and unwarranted. If there are defects in the legal theories underlying a case, or shortcomings in the proof offered to support them, there is no reason to doubt that they can be remedied by the elaborate procedures for administrative and judicial review set forth in Section 5 of the FTC Act and in the Administrative Procedure Act.

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[2] One respondent was subsequently dismissed from the case.

This position is consistent with the views of the Administrative Conference of the United States, which is charged by Congress with the responsibility of "study[ing] the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and mak[ing] recommendations to administrative agencies, * * * and to the President * * * [and] Congress * * *, in connection therewith," 5 U.S.C. § 574. The Administrative Conference has formally

> "express[ed] its concern about the precedent which would be set by any premature legislative intervention in administrative proceedings. Such intervention precludes orderly development and consideration of the complex issues involved and undermines respect for the administrative process. Absent compelling circumstances or revision of the underlying substantive statute, Congressional termination of pending administrative proceedings is undesirable." [3] Resolution Concerning Congressional Termination of Pending Administrative Proceedings at the Federal Trade Commission, December 14, 1979.

If, notwithstanding the foregoing considerations, the Committee determines to forward a bill of this nature for consideration by the Senate, the language of subsection (a) of the first section, as currently drafted, is unclear and would, consequently, be difficult for both the courts and the Commission to interpret and administer. Section 1(a) defines the reach of the prohibition proposed by barring proceedings "which involve" either of two issues:

> [1] whether a shared monopoly exists or
>
> [2] whether two or more unaffiliated persons, without agreement and intent, have established or maintained a concentrated market structure * * *.

Under the first formulation, a complaint need not expressly allege a violation in terms of "shared monopoly" to "involve" that issue. It has been explained that the restriction applies to any theory of violation under which a "small number of firms may violate the law simply by virtue of possessing substantial market shares." 127 Cong. Rec. at S 2765.

It has also been stated that "the cereal case is the only case currently being brought under this 'shared monopoly' theory and * * * S. 682 would affect no other existing litigation." We note, however, that under the above definition of shared monopoly, the Bill not does not literally foreclose decision in the Kellogg case, because the complaint in that proceeding is based on more than mere possession of market shares: It refers to a combination of methods of competition and acts and practices which allegedly has resulted in the maintenance by the respondents of a highly concentrated noncompetitive market structure in which they share and exercise monopoly power and monopolize the cereal market, and around which they have raised barriers to entry. On the other hand, if similarity to the Kellogg complaint as a whole is the measure of whether there is an issue "involving" shared monopoly, then it is possible that other cases, both pending and in the future, could be affected by the proposed bill.

The second formulation extends beyond "shared monopoly" to any proceeding under Section 5 which involves the issue "whether two or more unaffiliated persons, without agreement and intent, have established or maintained a concentrated market structure in [interstate or foreign] commerce * * *." This language is sufficiently broad, and sufficiently vague, to be invoked against cases and investigations involving competitive issues that seem far removed from the concerns expressed by the author of the Bill. This formulation could, for example, reach any Section 5 proceedings in which the structure of the market in which the respondent competes is at least one of the issues in question.

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[3] **We see no meaningful difference between the "termination" of a proceeding and the indefinite moratorium which would be imposed by S. 682. See p. 2 supra.**

In essence, the two formulations, as drafted, reach any case which "involves" the specified issues, whether or not the case is also based on other theories of law. Indeed, the moratorium would seemingly prohibit the issuance of decisions, even if they could be adequately, and independently, sustained on some other basis, such as an agreement to fix prices or other misconduct.

To conclude, the Commission believes that the proposed legislation is undesirable for two principal reasons: (1) it is premature in view of the carefully structured process of agency and judicial review already in place; and (2) because of its ambiguous scope, the legislation would be extremely difficult to interpret and administer.

We appreciate this opportunity to present our comments on this bill.

By direction of the Commission.

Carol M. Thomas
Secretary

INDUSTRY/CONSUMER IMPACT

Question: How will this shift impact industry and consumer?

Answer: The Commission will continue to enforce Section 5 of the FTC Act and other laws for which it has responsibility. A shift from rulemaking will not, for this reason, diminish protections now afforded consumers. Insofar as the shift results in avoiding unjustified regulation, it should also help reduce costs and burdens on business.

IMPACT ON EXISTING PROPOSED RULES

Question: How will this impact existing proposed rules and process?

Answer: There will be no impact upon those existing rulemakings continuing into fiscal year 1982. Conclusion of these proceedings would be funded by the revised budget.

ALTERNATIVES TO PROTECT CONSUMERS

Question: What alternatives are available to protect the consumer?

Answer: The available alternative strategies to address law enforcement problems in the Consumer Protection Mission are (1) case-by-case enforcement of existing statutes and rules; (2) the use, where applicable, of prior Comission precedent in the form of notices to industry members and industry; (3) the development of industry guides and enforcement policy statements; and (4) consumer education.

BUDGET FOR MAJOR INVESTIGATIONS

Question: The Federal Trade Commission has announced the termination of major investigations of children's advertising, the automobile industry and used car warranties.

(a) How much was budgeted for each of these investigations in the budget President Carter submitted for Fiscal 1982?

(b) How much was budgeted in the revised budget submitted by President Reagan?

Answer: The Commission's original FY 82 budget projected 7.0 total workyears for children's advertising and 6.5 for used car warranties. The automobile investigation was a part of the Commission's transportation program in the Bureau of Competition. The 1982 budget submission by President Carter contained a request of 46 workyears and $2,082,000 for the transportation program. Approximately 15 workyears were initially allocated within the program for that investigation.

President Reagan's submission contains a request of 30 workyears and $1,370,000 for the same program. The reduction in this program reflects the completion of several matters in litigation and the Commission's decision to close the automobile industry investigation. The resources initially allocated to that investigation have been reallocated to support high priority matters in other programs. The revised fiscal 1982 budget projected no workyears for the investigation of children's advertising. A total of 4.8 workyears is projected for used car activities.

DISTRIBUTIONAL RESTRAINTS PROGRAM

Question: The objective of the Commission's distributional restraints program is to "lower prices to consumers by preventing suppliers from forcing distributors or retailers to sell at prices higher than those that the distributors or retailers desire to charge, in violations of the antitrust laws." (p. 30) In fiscal year 1980, FTC obtained five consent orders prohibiting these retail price maintenance activities. (p. c-4). These orders provide no retrospective relief for consumers and no penalties to the firms. The legal precept that retail price maintenance is an unfair method of competition is certainly not new, yet suppliers are not penalized if they engage in it and, in fact, face no economic incentives not to engage in it.

3. How much does it cost the Commission to obtain these orders?

Answer: These five resale price maintenance orders were obtained as a part of the Commission's distributional restraints program which also includes investigations and cases involving price discrimination, non-price restraints, exclusive dealing and tying arrangements. The entire program for fiscal 1980 used 45 workyears and $1.7 million. Since all of these resale price maintenance orders were products of settlement after initial investigation rather than litigation, we would estimate that no more than 2-3 workyears were expended to obtain them.

4. Has FTC considered any alternatives, such as paragraph 205 or rulemaking, to more efficiently achieve its enforcement objectives in this program?

Answer: The staff of the Bureau of Competition has considered alternative remedies for resale price maintenance violations. As a general proposition, the conduct which may be found to constitute resale price maintenance varies from case to case to such an extent that rulemaking or use of Section 205 would be very difficult, if not impossible, to undertake. The law prohibits certain conduct and not merely the effect of price uniformity. However, we would point out that the effects on a company of being under an FTC order are significant. The prohibited conduct must cease prospectively subject to a penalty of $10,000 per day per violation. Also, it is frequently the case that states, under their parens patriae authority, and private litigants obtain damages from companies from whom the Commission has obtained an order. For example, the state of California obtained over $12 million from Levi Strauss Company as a result of a parens patriae suit following the entry of an order by the Commission. At least ten other state suits against Levi Strauss have been settled or are in process. The Commission continues its general policy of fully cooperating with state law enforcement agencies.

STATE & LOCAL LIAISON

Question: 49 states have mini- FTC Acts and are engaged in essentially the same type of activity as FTC, except on a smaller scale. What procedures does FTC follow to assure that it and the state/local agencies avoid overlap?

Answer: Instructions to the staff emphasize that before recommending any investigation, the staff should determine whether a state or local agency has the jurisdiction and authority to deal with the subject of the proposed investigation. Attached are excerpts from the staff Operating Manual containing those instructions. (OM Chapter 3.1.2.5 and Chapter 14,2.3).

Through its headquarters and regional offices, the staff maintains continuing liaison with state and local agencies. This liaison includes contact about specific actions and general exhanges of information to maintain an awareness of ongoing and planned activities to avoid unnecessary duplication of effort.

State and local agencies receive the FTC News Summary, press releases and other public information. Copies of the Consumer Protection Newsletter and the Antitrust Report published by the National Association of Attorneys General are widely distributed to FTC staff at headquarters and the regional offices. The newsletter published by the National Association of Consumer Agency Administrator (NACAA) is similarly distributed. NACAA's membership includes most of the state consumer protection offices, as well as city and county consumer protection agencies.

FTC staff regularly participate in NAAG and NACAA discussion of new developments in areas of mutual interest. To the extent possible, the staff provides information about planned FTC activities. Informal communications between FTC program staff and state and local agency staff are encouraged by furnishing the agency staff with the names and telephone numbers of FTC staff contacts. There are frequent informal discussions between FTC staff and state and local staff on matters of mutual concern.

These formal and informal procedures have been successful in eliminating instances of overlap between te FTC and state/local agencies. In many matters, state and local agencies have withheld action where the Commission was prepared to deal with a particular problem. Similarly, FTC action has been withheld when it was determined that a state or local agency possessed the jurisdiction and authority to take effective action.

Question: How does FTC stay aware of state activities?

Answer: Many of the ways in which the FTC maintains a continuing awareness of state activities are discussed in the response to No. 5 above. The primary responsibility for continuing liaison between the FTC and state/local agencies is necessarily in the regional offices and those offices use a variety of approaches to maintaining awareness of stae activities.

For example, in New England, the assistant attorneys general for both consumer protection and antiturst have formed committees which meet periodically to discuss regional problems. The FTC's Boston RO maintains close contact with those committees and its a participating member of the one which deals with consumer protection matters (Eastern States Attorneys General Consumer Protection Committee). The Los Angeles RO was recently invited to praticipate in a computerized consumer complaint indexing system established by the California Attorney General which will include information about consumer complaints received by all stae and local consumer agencies in that state.

Various ROs have held meetings from time to time attended by state and local consumer agency representatives from the region. ROs receive newsletters, copies of pleadings and other information from state and local agencies as well as maintaining frequent, informal contact on a day-to-day basis. There is a continuing, highly cooperative relationship between the ROs and most state attorneys general. State legislatures frequently request formal or informal comments from ROs on relevant matters.

Question: Does FTC determine whether businesses which states cite for potential/alleged violations of mini-FTC acts engage in the challenged practices beyond the state's borders and whether federal action is needed to protect consumers and maintain competition?

Answer: The possibility of complementary actions by state attorneys general and the FTC is always considered when interstate activities are involved. In some instances, limitations on the jurisdiction or authority of the attorney general may preclude the state from taking action that is fully effective in halting the unfair or deceptive practices. For example, in a recent land sales case, the state attorney general criminally prosecuted the principal and obtained completion of certain improvements on the property. However, the state statute of limitations precluded the attorney general from obtaining additional relief or purchasers. Complementary action by the FTC resulted in substantial redress for consumers.

Another example of complementary action by the FTC was the General Motors "engine switch" case. Forty-eight state attorneys general entered into a settlement with GM which provided for payments of $200 and extended warranties for purchases of vehicles equipped with engines manufactured by a GM division other than the one that manufactured the vehicle. Action by the FTC resulted in a settlement providing for point-of-sale disclosure and prohibitions against future misrepresentations of the manufacturing source of engines installed in GM vehicles.

The sales and collection practices of interstate magazine submscription agencies have been the subject of numerous consumer complaints. A coordinated effort by an FTC regional office and a number of state attorneys general resulted in the development of evidence which led to a settlement of an FTC case against one such company providing for $125,000, in civil penalties plus a permanent injunction against future violations. A civil penalty action is pending against another such company. In both instances, FTC action will result in protection for all consumers regardless of where the companies choose to operate in the future. Although individual state actions against such companies have resulted in relief for the residents of those states, the injunctions obtained by the FTC will follow the companies wherever they locate and eliminate the need for future multiple state enforcement actions.

Because of the cooperative relationship between the state attorneys general and the FTC, particularly the regional offices, there have been numerous instances in which states have brought to the attention o the FTC possible violations of consumer protection or antiturest laws when it became apparent to the attorney general's office that federal action would be the most effective remedy.

FILTER QUEEN VACUUM CLEANER

Question: For example, in its 10/9/80 issue the Antitrust and Trade Regulation Report reported that the Vermont Attorney General had received an assurance of discontinuance from the manufacturer of Filter Queen Vacuum cleaners. The company agreed it would not threaten or coerce retailers into selling at the suggested resale price. Is the Commission aware of this action? Does it know whether the company sells in othe states, and, if so, whether it is engaged in illegal retail price maintenance? If the company is, what can/will FTC do about it?

Answer: The Commission was aware of this action by the Vermont Attorney general. The Boston RO maintains close contact with the state assistant attorneys general for antitrust in ts region which includes Vermont.

Health-Mor, Inc., the manufacturer of Filter Queen Vacuum cleaners, is a Chicago-based company which sells through distributors who sell to independent dealers in other states. The independent dealers sell direct to consumers through in-the-home solicitations. It is out understanding that the investigation by the Vermont Attorney general's office indicated that the local distributor was the party responsible for the alleged illegal activity in Vermont and that there was no evidence that the manufacturer was coercing independent dealers to maintain resale prices. In light of that informaton, there appeared to be no basis for an investigation by the Commission. If the inquiry by the Vermont Attorney General had developed evidence that the manufactureer was forcing its independent dealers to maintain resale prices, that evidence would have been bought to the attention of a Regional Office for appropriate response.

The primary responsibility for the Commission's resale price maintenance matters, a component of our distributional restraints program, is in the regional offices. A significant number of investigations by RO's have resulted in orders to cease and desist being issued against major manufactures and distributors of consumer products prohibiting them from coercing independent dealers to maintain resale prices. [1]

Some recent cases include:

Docket C-3041, Tingley Rubber Corp.
(footwear)

Docket C-3029, Towle Manufacturing Co.
(tableware)

Docket C-3027, Clinique Laboratories, Inc.
(cosmetics)

Docket C-3008, The Hartz Mountain Corporation
(pet supplies)

Docket C-2985, Pendleton Woolen Mills Inc.
(wearing apparel)

Docket C-2929, Interco Incorporated, et al.
(shoes and wearing apparel)

Docket C-2900, Copco, Inc.
(housewares)

Docket 9081, Levi Strauss & Co.
(wearing apparel).

.1 GENERAL

.1.1 PURPOSE AND SCOPE

The purpose of this chapter is to provide guidance for the initiation, conduct, and disposition of investigations. It will discuss general policies for recommending investigations, describe the investigational procedures that may be followed and consider the enforcement and correction alternatives that are available.

.1.2 POLICY

.1.2.1 General

Investigations may be authorized to inquire into: (1) any acts, practices, conduct, or circumstances which the Commission has been authorized by law to investigate; (2) suspected violations of the laws and regulations enforced by the Commission; (3) industry practices to determine whether a trade regulation rule, legislation, or other means of corrective action would be appropriate; or (4) possible violations of a Commission order to cease and desist. (See OM Ch. 12 for special procedures applicable to compliance investigations.)

The investigational powers of the Commission are derived from Sections 6, 9 and 10 FTCA and are exercised in accordance with the procedures set out in Part 2A of the Commission Rules.

.1.2.2 Subject Matter

The Commission possesses broad jurisdiction to deal with unfair or deceptive acts and practices and unfair methods of competition under the FTCA and the various special statutes enforced by the Commission and to deal with various anticompetitive acts and practices under the Clayton Act. However, because the resources of the Commission are limited and must be carefully managed to produce optimum results, a programmatic budget has been established which includes various approved enforcement programs with specific objectives.

Every investigation can be placed within the ambit of an approved program and all memoranda and other internal communications should identify the applicable program code. For detailed information concerning programs, see OM Ch. 2.

.1.2.3 Nonpublic Nature of Investigations

Unless otherwise directed by the Commission, all investigations are nonpublic. Accordingly, the existence of the investigation, the identity of the parties or practices under investigation, the facts developed in the investigation and any other nonpublic information in the files can be disclosed only in accordance with the Commission's directives and procedures for the disclosure of information (see .3.3.1 below). See OM Ch. 15 for further guidance regarding confidentiality and disclosure.

.1.2.4 Investigations Requiring Advance Commission Approval

.1.2.4.1 Large Scale Investigations

No large scale or industry-wide investigation or study is to be undertaken, if numerous proposed respondents or substantial expenditure of Commission resources are involved, or if a significant change in the overall resource levels (work-years or dollars) of a Commission-approved program will result unless prior approval has been granted by the Commission. The proposal for such an investigation should be discussed with the appropriate program advisor in BCP or the Associate Director for Evaluation, BC, if a competition matter. Regional office staff should consult the Assistant Director for Regional Operations, BC, for competition matters. If it is agreed that Commission approval is required, the proposal for the investigation should be submitted to the Commission by explanatory memorandum routed through the appropriate review and evaluation procedure.

.1.2.4.2 Investigations of Publishers and Broadcasters

No investigation of a newspaper, magazine, or book publisher or a radio or television station may be initiated without advance approval by the Commission and no contact can be made with such proposed respondent before the investigation is approved by the Commission. The proposal for the investigation should be submitted to the Commission by a fully explanatory memorandum routed through the appropriate review and evaluation procedure.

.1.2.5 Liaison with Other Agencies

In considering the advisability of any investigation, staff should consider whether any other federal agency or any state or local agency has the jurisdiction and authority to take effective action to deal with the matter. See OM Ch. 14 for further guidance on liaison in general, including listing of designated Commission liaison officers for federal agencies. In determining whether an investigation should be initiated, the staff may be authorized by Assistant Bureau Directors and Regional Directors to exchange information with federal, state and local agencies to the extent necessary for an informed preliminary determination as to whether the matter might be best handled by the Commission or by another federal or state or local agency . Special considerations applicable to liaison in connection with investigations will be discussed in Parts .2 and .3 of this chapter.

Chapter 14 LIAISON

.2.3 METHODS OF COOPERATION

.2.3.1 Referral of Matters

When it appears that a consumer complaint involves a practice which is primarily intrastate in character, the complaint may be referred to the appropriate state or local agency or it may be suggested to the consumer that the complaint be made direct to the state or local agency. See OM Chs. 15 and 16 for further guidance as to such referrals.

If the staff has determined during an investigation that the practices are primarily intrastate in character and a state or local agency has the capability and willingness to take corrective action, the matter should be submitted for closing with the recommendation that the nonexempt materials in the file be made available to the state or local agency. See Illustration 1 for language to include in memorandum recommending closings. If the recommendation is approved, the files ordinarily will be returned to the originating office for appropriate action to make the nonexempt materials available. See Illustration 2 for an example of an appropriate referral letter. See OM Ch. 3 for procedures. If the state or local agency to which the nonexempt documents are referred would like to have access to the rest of the Commission's files, the staff should explain the appropriate procedures for requesting such access. See OM Chs. 15 and 16 for further guidance.

.2.3.2 Exchange of Information

In determining whether an investigation should be initiated, staff should contact state and local agencies in the affected geographic area to determine whether such agencies have any information relevant to the proposed investigation. Such inquiries provide a convenient liaison vehicle for keeping state and local officials aware of Commission activities and encouraging them to identify potentially unfair or deceptive or anticompetitive practices. In making such inquiries, staff may exchange information (confidential information or exempt documents, however, may be given out only through the procedures described in OM Ch. 15) with the state or local officials to the extent necessary for an informed determination whether the proposed investigation can be best handled by the Commission or by the state or local agency. See OM Ch. 3 for further guidance.

.2.3.3 Compendium of State and Local Laws

Regional offices should endeavor to maintain a compendium of state and local laws, applicable within their jurisdictions, designed to prevent methods, acts, and practices similar to those within the purview of laws administered by the Commission. A duplicate set of such materials should be furnished on a continuing basis to the Office of the Executive Director (Attn: Deputy Director of Federal-State and Consumer Relations) to be available for use by headquarters staff. It will not be necessary to assemble copies of the state antitrust laws, consumer credit laws, or the food, drug, and cosmetic laws, since they are readily available in the CCH Trade Regulation Reporter, Consumer Credit Guide, and Food, Drug, Cosmetic Law Reporter, respectively. But state and local laws similar to the Federal Trade Commission Act, Magnuson-Moss Act (re warranties and rulemaking), and the Fair Packaging and Labeling Act should be furnished, because they are not readily available from other sources.

.2.3.4 Training of State and Local Law Enforcement Personnel

Headquarters and regional office staffs should, to the extent feasible, provide training assistance to state and local agencies engaged in trade restraint and consumer protection law enforcement work, through participation in conferences, meetings, seminars, and informal discussions. Such activities, other than informal discussions which do not involve a substantial expenditure of time, should be coordinated with the Executive Director's Office (Attn: Director of Federal-State and Consumer Relations) to avoid possible duplication as between headquarters and regional offices and to obtain maximum coverage and benefit.

.2.3.5 List of Cooperating State and Local Officials

Each regional office should maintain a list showing names, addresses, and telephone numbers of state and local agencies engaged in functions similar to those performed by the Commission, with indication of the types of matters that might be referred to each agency. The Deputy Director of Federal-State and Consumer Relations in the Office of ~~the Executive Director~~ will assist in the preparation and maintenance of such lists, and will keep duplicates of the lists for information and use of headquarters staff.

.2.3.6 Requests for Advice or Assistance

To the extent feasible, effort will be made to furnish information, advice, and assistance to state and local officials who are contemplating the establishment of programs or the undertaking of administrative or enforcement action consistent with the laws, programs, and policies of the Commission.

.2.3.7 Advocacy of Legislation

Effort should be made to bring about the enactment of state and local laws consistent with the laws and programs administered by the Commission at the national level, and to discourage the enactment of laws and ordinances which are inconsistent. Such activity may include testimony before state and local legislative bodies and will be carefully supervised by regional directors and assistant bureau directors, with coordination by the Director of Federal-State and Consumer Relations in the Office of the Executive Director, especially to avoid over-involvement in matters primarily of intrastate or local significance. When the subject matter of the proposed testimony involves a particular enforcement program, the staff should consult the appropriate bureau if the matter is controversial or likely to need bureau coordination. Proposed testimony shall not contain reference to any pending legislation, adjudicatory matter or rulemaking proceeding, beyond information on the public record, without obtaining specific authorization from the General Counsel or the Commission.

.2.3.8 Consumer Protection Coordinating Committees

The Bureau of Consumer Protection and Regional Directors are authorized to participate in the operation of consumer protection law enforcement coordinating committees in metropolitan areas. See OM Ch. 15 regarding authorization to disclose certain information to participating state agencies.

2.3.9 Effect of Trade Regulation Rules on State and Local Laws

As a part of the federal-state relations activity, the staff should encourage participation by appropriate state and local officials in TRR proceedings pursuant to Section 1.14(a)(4) of the Commission's Procedures and Rules of Practice. See OM Ch. 7 on Rulemaking for further guidance.

Language for Transmittal Memorandum 4 Ref. 14.2.3.1

It is further recommended that upon closure of the file, (attorney or Consumer Protection Specialist who recommended the closing and is knowledgeable about the matter) be authorized to refer nonexempt information and documents from the file to (state or local official) for such action as may be warranted under state or local law, and that the file be returned to the (regional office) for necessary action.

FINES FOR SUBPOENA NONCOMPLIANCE

Question: According to Appendix B of FTC's FY 1982 Budget Justification, U.S. District Couts fined 18 businesses a total of $173.850 for their failure to supply special reports as ordered by the Commission mainly under the quarterly financial reporting program. The appendix also lists several cases where FTC had to go to court to enforce subpoenas, but did not obtain fines. Paragraph 10 of the FTC Act requires fines of at least $1000 and not more than $5000, or imprisonment, or both when any person fails to obey subpoenas. Why hasn't FTC sought or demanded fines for noncompliance with its subpoenas?

Answer: Until recently Section 10 of the FTC Act, 15 U.S.C. §50, made it a criminal offense to "neglect or refuse" to obey a Commission subpoena. There were few attempts to prosecute persons under this provision. The primary reason was that statutes such as this, making noncompliance a criminal offense, have been construed as not applying to situations where the witness appears and interposes in good faith some colorable basis for noncompliance. See, e.g., Reisman v. Caplin, 375 U.S. 440, 447 (1964) (provision in IRS Code); Anheuser-Busch, Inc. v. FTC, 359 F.2d 487, 490 (8th Cir. 1966) (so construing § 10 of the FTC Act). It had been the Commission's experience that witnesses who refused to comply with subpoenas usually made a record before the Commission showing the basis for their resistance. It would have been difficult for the government in these cases to have demonstrated that the objection was not interposed in "good faith."

The possibility of prosecuting a person for failure or neglect to comply with a Commission subpoena prior to judicial enforcement was eliminated last year. Section 6 of the Federal Trade Commission Improvements Act of 1980 amended Section 10 to provide that fines or imprisonment may not be imposed unless noncompliance occurs after a district court has entered an order directing compliance with the subpoena. Ordinarily, of course, once a court has ordered enforcement, the party complies.

With respect to corporations which fail to file reports under the Quarterly Financial Reports survey, the Commission continues to refer such matters to the Department of Justice for collection of forfeitures. These forfeitures, amounting to $100 per day for every day of noncompliance, are provided in civil, not criminal, suits. Only a small number of companies out of the some 16,000 corporations included in the survey refuse to file these forms, necessitating such lawsuits.

COSTS OF INVESTIGATIONS

Question: Many states and local law enforcement agencies recover the cost of their investigations from the businesses being investigated, even when the case is settled by consent agreements. Does the FTC Act, the Administrative Procedure Act, or any other statute prohibit FTC from trying to recover the cost of its investigations from the respondents? If not, has FTC considered doing this?

Answer: The Commission has no specific authority to impose on persons under investigation the costs of the Commission's investigation. The only statute which enables agencies such as the FTC to assess charges for is services is the User Fee Statute, 31 U.S.C. § 483a which empowers agencies to assess fees for direct benefits provided to members of the public, such as copying and licensing fees. The Supreme Court has construed that statute narrowly and has invalidated an attempt by the Federal Communications Commission to recoup the cost of cable television regulation from those being regulated. National Cable Television Ass'n v. U.S., 415 U.S. 336 (1974); see also Federal Power Comm. v. New England Power Co., 415 U.S. 345 (1974) (rejecting FPC's attempt to assess the industry for the cost of administering the Natural Gas Act). In both cases the Court was concerned that the agencies were attempting to impose a tax rather than a fee and that inso doing the agencies would be usurping the taxaton power of the Congress. Similarly, the Comptroller General has ruled that, absent specific authority, an agency may not accept money from private sources because to do so would constitute an impermissible augmentation of the Agency's budget. 46 Comp. Gen. 689 (1967); 35 Comp. Gen. 268 (1956); 23 Comp. Gen. 694 (1944). For these reasons, the Commission has not considered attempting to recover the costs of its investigations from the persons being investigated.

always be represented by staff attorneys, as consumer views are not monolilthic and in fact often involve a broad range of viewpoints on issues. As the Moss Federal Regulation and Regulatory Reform report indicated when commenting on the National Council of Senior Citizens' participation in the hearing aid rulemakeing proceeding, "The direct consumer contribution was probably more effective because it was gathered by a group familiar with the needs and experiences of this class of consumer, sharing intimately experiences which might not be precieved by the Commission staff." The Senior Citizens as an independent advocate added dimension which would not have been supplied by the Commission staff."

It is also questionable whether the staff attorneys assigned to rulemaking could successfully and effectively represent the varied interests of those small businesses and their trade associations unable to afford costs of participation. Without the public paticipation program, it si likely that these voices would go unheard.

For instance, the Council of State Credit Institutes, a trade association of small creditors of limited means from nine southern states, recieved funding in the Credit Practices proceeding because the size and resources of its members was such that it could not afford effective participation. Its participation ensured that such small creditors, who were represented neither by the American Bankers Associatin nor by the other major trade associations which participated actively in the proceeding, were able to participate fully in the rulemaking process.

Indeed, the Small Business Legislative Council of the National Small Business Association has stated that the FTC's public participation program has done more than any othe govermnent program to encourage the participation of small businesses in government decisionmaking.

SUPPORT STAFF

Question: To what extent has the FTC administrative support staff grown since 1976, why?

Answer: The proportion of the Office of Administration and Management staff, the primary administrative support group, to total Commission employment has remained relatively constant since 1976--about 10%. Actual employment on June 30, 1976 was 185 while currently it is 161 full-time permanent staff. Moreover, a number of new initiatives and statutory requirements have been absorbed over these years. Most notable have been the activities in implementing the Civil Service Reform Act, extensive increased demands brought about by the agency's procurement and contracting function, external OMB and GSA reporting requirements, zero-based budgeting processes, demands created by the physical dispersion of the Washington Headquarters throughout seven buildings.

ADMINISTRATIVE SUPPORT

Question: To what exetnt has each Bureaus' administrative officers, administrative assistants, budget people, etc., grown since 1976? Why?

Answer: The administrative staff in the three major operating Bureaus have grown very little. The Bureau of Competition has increased its administrative officer positions from 4 to 6. This increase resulted from a need to expand Bureau supervision and control of contract support to litigation and to implement new budget and managements controls. There has been no growth in the other bureaus.

LINE OF BUSINESS

Question: How useful will the 1977 line of business report be in 1982, in terms of identifying potential anticompetitive practices?

Answer: The FTC seeks to identify industries which exhibit persistent patterns that may be the result of anticompetitive practices. By referring to the aggregate LB data for several years, Commission economists will be able to determine values of critical performance ratios for an industry. Because fluctuations over a business cycle may affect such ratios for individual years, it is important to take averages over a period of time to get a more accurate picture of typical industry performance. Accordingly, historical data are not only useful, they are mandatory for sound analysis. The ratios in question include profits to sales, advertising to sales, selling expense to sales, research and development to sales, profits to assets, depreciation to assets, inventories to assets, and assets to sales.

Given this improved information about industries, staff economists will be better able to advise Congress the Commission and other agencies on which industries exhibit persistent patterns which may be suggestive of competitive problems. The data will also document the effects that any such practices may have on the public. When this is done for a number of industries, Commission management will be in a better position to allocate its investigative resources.

In addition to these direct policy applications, considerable basic research will be conducted with LB data. The results of this research in aggregated form will be used by Commission staff to provide insight into how competitive forces work in markets, to identify situations which seem to hinder the effectiveness of competition, and to evaluate alternative remedy strategies in those circumstances where action is called for. The aggregate data will also be of substantial value to financial analysts in both the business and academic communities.

Question: Does FTC plan to evaluate the costs and benefits of this program as GAO recommended, with an eye toward killing the program if the benefits prove too elusive to attain?

Answer: The Commission accepted the recommendation of GAO that it develop a plan for weighing the benefits of the Line of Business (LB) Program against its total costs.

The Commission intends to submit its plan for conducting cost-benefit analysis to OMB when it requests clearance, under the Paperwork Reduction Act of 1980 (Pub. L. 96-511), for the collection of LB data for years subsequent to 1977. Because the publication of the aggregated reports has been delayed, a complete analysis of the benefits from the LB data can not yet be performed.

CIVIL INVESTIGATIVE DEMANDS

Question: The FTC Improvements Act of 1980 requires the FTC to use civil investigative demands in consumer protection cases in lieu of using subpoenas. In addition, the Commissioners are required to sign these civil investigative demands. Has the Commission experienced any problems in their use? What has been the impact of their use--on such matters as staff time, resources, and scope of an investigation?

Answer: Under the FTC Improvements Act, Civil Investigative Demands (as well as subpoenas and other investigatory orders) must be signed by a Commissioner. Because commissioners have given prompt attention to process requests, this procedure has caused only minimal delay, although all requests for compulsory process are now subject to additional scrutiny. While some additional resources are necessarily expended in obtaining the approval of a commissioner for a civil investigative demand, they have not proven to be substantial so far. In fact, the system has worked quite well. The scope of Commission investigations is a function of the types of possible law violations being investigated; document requests under the present system are carefully tailored to ensure that they are strictly relevant to the possible violations under scrutiny.

PUBLIC PARTICIPATION PROGRAM

QUESTION

During the last several years, many participants have received minimal FTC support under its public participation program. Many of these proposed rules, such as the used car and funeral rules, are in their final stages. What are your views on the benefits/significance of public participation?

ANSWER

In the Commission's view public participation funding has had a valuable and beneficial impact on the quality of the evidentiary records developed in rulemaking proceedings. The program enables broader and more effective participation by groups typically unable to express their views to the Commission on pending rule proposals. The effect of that participation has been to provide the Commission with better more fully developed factual records, which in turn forster improved Commission decisions on pending rule proposals. The Senate Committee on Governmental Affairs' July 1977 Study on Federal Regulations (Vol. II, p. 113) reinforces this view:

> The compensation of participants in agency proceedings is a solution that responds directly and specifically to what is now a fundamental obstacle to public participation--its cost. In addition to rights, the funding of participants may well aid the regulatory process by providing a more reliable information base on which to reach decisions. Indeed this has been the experience at the Federal Trade Commission.

During the current fiscal year, this program has assisted participants in five rulemaking proceedings:

Used Motor Vehicles
Credit Practices
Mobile Homes
OTC Drugs
Funerals

Of the eight groups assisted, for example, two were business trade associations, one was a car owners' membership group, one a preplaned funeral association, one a senior citizens' group and one a mobile homeowners' membership association.

It would be difficult for the Commission to compensate for the absence of this public participation in its trade regulation rulemaking proceedings.

LIAISON WITH DEPARTMENT OF JUSTICE

Question: Antitrust enforcement activities are shared by both the Justice Department and FTC. To what extent do you cooperate with each other, beyond the coordination of enforcement activities? In which areas? For example, are line of business data and other economic data shared.

Answer: The Department of Justice and the Federal Trade Commission share a common objective in the promotion of competition policy. Coordination and cooperation pervade many of our daily activities.

Formal liaison arrangements have long been established to avoid conflict and duplication of effort. These same channels are used for coordination and cooperation, in order to ensure the most efficient and effective enforcement effort by each agency. Thus, liaison efforts will determine which agency may best handle a particular matter, not merely avoid conflict or waste of resources.

Cooperation includes exchange of information and views concerning enforcement criteria and guidelines. For example, the FTC uses the Attorney General/Antitrust Division guidelines on merger enforcement, international operations, and joint ventures in research and development to the maximum extent possible. The Antitrust Division has followed provisions for relief that were developed by the FTC, in the resale price maintenance area, for example.

The agencies may also share evidence developed in specific investigations. Commission files and market data are routinely made available to representatives of the Attorney General upon compliance with certain legal formalities. In return, the Department makes available so much of its files as are not prohibited from disclosure (such as Grand Jury transcripts and materials) and provides liaison with other offices in the Department, such as the Federal Bureau of Investigation, Immigration and Naturalization Service, etc.

Formal consultation and cooperation are carried on under a variety of special statutes. The international energy program, the Defense Production Act, and formulation of forms and rules under the Hart-Scott-Rodino Act's premerger notification program are but a few.

Although individual company data obtained in the line of business and quarterly financial reporting programs are not available to either the Commission's own staff or the Department of Justice for law enforcement purposes, aggregated data that is reported by the Commission may be used by both agencies in planning and implementing their enforcement programs. Other data and analyses are freely available to the staffs of both agencies, to the maximum extent permitted by law.

Finally, the Department provides direct legal services to the Commission in some circumstances. Even where the Commission is authorized by law to be represented by its own staff, offices of the United States Attorneys may provide very useful support in connection with proceedings in the federal courts. There are also procedures by which the Department of Justice litigates on the Commission's behalf suits involving violation of FTC orders.

LITIGATION LIABILITY

FTC is involved in litigation stemming from a class action discrimination suit. Settlements have been reached in claims of 2 claimants and others are pending.

Question: What was the dollar cost to FTC in the two settlements?

Answer: To date there have been two settlements prior to the Magistrate's decisions requiring cash settlements of $3,000 each. The settlements also provided for attorney fees not to exceed $2,700 in one and "reasonable fees" for the other.

Question: What is FTC's potential liability in the remaining claims?

Answer: There are 29 claims pending before the Magistrate. The claimants seek a total of over $300,000 in back pay plus attorney fees. The agency is contesting liability and the back pay calculations. These claims are likely to be decided by the court.

QUARTERLY FINANCIAL REPORT

Question: What has the Commission done to try to transfer the program to a more appropriate Federal agency--one specifically charged with and skilled in collecting and reporting industrial or financial data--such as the Bureau of Labor Statistics, Department of Commerce?

Answer: The Federal Trade Commission has been responsible for all or part of the Quarterly Financial Report (QFR) for 34 years. The program has remained at the FTC because it is of value to our other activities, and because the agency has developed considerable expertise in working with economic data, and because only the FTC among possible collecting agencies has the compulsory process authority needed to collect the data.

Section 6 of the Federal Trade Commission Act charges the agency with gathering, compiling, and reporting information on business conduct and practices. Although the individual data are confidential and may not be used for law enforcement purposes, the aggregated QFR data provide useful input into Commission policy decisions, reports, and Congressional testimony. Moreover, because reporting is an important part of the agency's overall mission, the Commission has developed considerable expertise in working with industrial and financial data.

The Commission's Bureau of Economics, which manages the QFR program, routinely works with economic data from a variety of sources. Accordingly, the QFR program benefits from the Bureau's considerable economic and statistical skills. In addition, the program itself has been responsible for a number of improvements in sample design, auditing techniques, and data manipulation. In 1971 the Office of Management and Budget recognized the FTC's successful administration of the program by recommending that the Commission assume responsibility for that portion of the program formerly administered by the Securities and Exchange Commission.

Question: Who are the non-Federal users of this data? Should they be charged for it?

Answer: The Quarterly Financial Report consists of some 90 pages. Distribution is made by the Government Printing Office at a price which they currently establish as $10 per year. The mailing list runs over 3,000 and includes economic research centers, universities, financial analysts, accounting firms, libraries, and foreign governments. The QFR provides the basis upon which profits are estimated for inclusion in the GNP. In that sense, every user of the GNP is indirectly a user of the QFR.

Question: Why doesn't FTC provide this data to Federal users on a cost-reimbursement basis?

Answer: The QFR was established for the federal statistical community as a whole. Although the principal Federal users include the Federal Trade Commission itself, the Bureau of Economic Analysis of the Department of Commerce, and the Federal Reserve Board, many other Federal agencies rely upon the data. Any attempt to apportion cost among users would be an arbitrary accounting exercise. Since, in the end, the cost is borne by the U.S. Treasury, the allocation exercise would not produce efficiencies which would make the effort worthwhile.

Question: Has the Commission complied with para. 3(b) of the FTC Improvements Act of 1980 re: reducing burdens on small businesses? If so, will the planned reductions result in any savings to FTC?

Answer: The Commission has complied with para. 3(b) of the FTC Improvements Act. The number of small firms reporting to the program will be reduced by 1600. In addition, the form used by small firms to report will be simplified. The number of questions on the form will be reduced from 63 to 35. The response to these changes from 100 small firms surveyed by the FTC has been highly positive.

Not only will there be savings to the small business community, but there will be direct savings to the FTC in mailing, auditing, and processing. The revised FY 1982 budget for the QFR Program will be reduced by six positions.

CUSTODIAL DOCUMENTS

Question: The 1980 amendments to the FTC Act imposed restrictions on the care and use of information obtained from businesses by requiring a custodial arrangement.

(a) What has been the Commission's experience with these arrangements?

(b) Have the restrictions increased the cost of an investigation?

Answer: The Commission's implementation of the custodial and confidentiality provisions of the 1980 amendments has gone smoothly. Attached is a notice to the staff which describes the procedures used by the Commission in insuring the confidentiality of documents submitted to it.

Although the custodial restrictions have necessarily imposed costs on the Commission in the areas of recordkeeping, copying, and filing, it is difficult to quantify these costs. In most instances, these costs have been outweighed by reductions in the cost of processing Freedom of Information Act requests for submitted documents since such documents are in most cases now wholly exempt from disclosure under the FOIA. In addition, persons under investigation may now be cooperating more readily with FTC requests for information thus obviating the need for court enforcement of compulsory process.

November 12, 1980

NOTICE TO THE STAFF

Re: Treatment of Custodial and Other Documents Submitted to the Commission

The FTC Improvements Act of 1980 and the Commission's implementing rules require that the Commission establish special procedures to handle documents received pursuant to compulsory process in a law enforcement investigation. A custodian and a deputy custodian are appointed to receive these documents and to insure that they are kept confidential. Custodians also must limit copies to those required for official Commission use. In addition, since all documents submitted to the Commission must be returned to the submitter on demand at the close of the proceeding, the custodian must preserve the integrity of documents submitted.

The concern for confidentiality and the obligation to return documents submitted extends beyond custodial documents to all documents received by the Commission in any investigation. Thus, the procedures outlined below should be followed for all documents received by the Commission. While it is unworkable to formulate highly detailed procedures that can apply to different bureaus and regional offices due to space and other constraints, the following procedures are the minimum necessary to insure compliance with the statute.

1. When documents are first received by the custodian, deputy custodian, or person in charge of an investigation, each document must be marked with the name of the investigation and the submitter. This process must precede any other review or analysis of documents.

2. Each page of every document received in an investigation must be sequentially numbered. Documents should be numbered with colored ink (other than black) which will clearly differentiate the documents initially submitted from Commission-made copies.

CONSUMER EDUCATION

The Bureau of Consmmer Protection budget calls for a doubling of its capacity to develop public service announcement campaigns. (p.62)

Question: Cite some instances where FTC has opted to use public education in lieu of some form of regulation, such as case-by-case litigation or rulemaking.

Answer: The revised budget proposes an increase in consumer education spending for public service announcements from $203,000 to $278,000.

The proposed use of these funds is to design and produce advertisements for television and radio and printed material that would be disseminated to consumers who are protected by the different statutes and rules the Commission enforces. The proposed increase is to fund use of this strategy for the number of rules that are expected to become effective during fiscal year 1982. We are currently reviewing this program in light of the President's memorandum of April 20, 1981 on eliminating wasteful spending on government periodicals, pamphlets and audio-visual products.

Public service announcement campaigns are used together with other enforcement strategies to promote consumer awareness of laws that protect them and to enhance their decision making abilities in the marketplace. For example, in connection with the recently promulgated "R-value" rule, a campaign will begin this Fall to tell consumers about the importance of using "R-value" information to compare competing insulating products. Within the recent past, similar efforts have been conducted in connection with rules relating to delays in mail order delivery, release of eyeglass prescriptions, warranties and cooling-off periods in door-to-door sales.

In recent years, the agency has utilized consumer education in a number of ways as an alternative to rulemaking and litigation. For example, the agency issues a monthly publication called "Facts For Consumers." The fact sheets translate and condense the results of staff investigations or address general areas of consumer protection. "Facts for Consumers" is an effective alternative to regulation because it gives consumers the information they need to make informed decisions and protect themselves from deceptive practices. The effectiveness of the publication is enhanced because it reaches 10,000 consumer and business leaders, journalists and educators who pass the information on to others. It also gives practical consumer advice which otherwise might be lost in technical FTC reports. Some recent topics covered in this series include buying clubs, auto repair, loose-fill home insulation, home buying and electronic banking.

In addition manuals are produced to assist businesses understand their rights and obligations under the laws enforced by the FTC. For example, the recent booklets "Handling Customers Complaints" and "Advertising Credit Terms" have been praised by industry leaders and law enforcement officials. Two booklets being developed, "Writing A Readable Warranty" and "Advertising and Marketing for Small Business" will provide further assistance to businesses which are affected by these statutes.

CONSUMER EDUCATION EVALUATION

Question: Has the Commission evaluated, or does it have any indication of how successful this approach has been in protecting consumers?

Answer: The Commission has not conducted a formal evaluation of its consumer education activities. Nonetheless, in connection with BCP's efforts to measure the impact of rules on the marketplace, information about the effect of such efforts may appear.

The information that is available suggests that the effort has been successful. First, consumer reporters in the various media use FTC materials for news reports and print columns to advise their viewers or readers. Second, several public service announcements have received a very favorable response and free air time from several television and radio networks as well as numerous individual television and radio stations.

VOLUNTARY INDUSTRY ACTION

A number of major FTC regulatory actions have been averted when the affected industry acted on its own to deal with the problem. For example, the Bureau of Consumer Protection closed its investigation of veterninary advertising restraints because the American Veterinary Medical Association, most State association and most State licensing boards lifted those restraints.
Question: To what extent has industry action satisfied FTC's concerns about unfair to deceptive practices, thus avoiding regulatory action?
Answer: In addition to the veterinarian example, there have been other instances where industry action satisfied FTC's concerns about unfair or deceptive practices. In the past potential rulemakings were abandoned in view of changed industry practices as to advertising and labelling of cellular plastics, pesticide advertising and advertising bans by accountants. More recently, the Commission announced it is seeking public comment on voluntary action to improve nutrition and health information in food advertising as an alternative to using further rulemaking in the food advertising area.
Question: How does FTC assure itself that the industry group can halt or correct the problem?
Answer: The agency assures itself that an industry can halt or correct the problem by observing voluntary changes and resulting practices. After proceedings are ended, routine monitoring of industry practices is conducted to determine whether the closing was appropriate.

FTC-JUSTICE DEPARTMENT LIAISON

Question: In light of the budget cut for the Bureau of Competition, what steps will be taken by the FTC and the Antitrust Division of the Justice Department to improve their coordination of division of labor on antitrust cases in order to maximize the government effectiveness in this area?

Answer: The Bureau of Competition and the Antitrust Division have long recognized the need for careful coordination of their activities to avoid placing undue burdens on subjects of enforcement activities and to assure that enforcement policies are clearly articulated to the public. A liaison arrangement was established years ago and has worked quite well, according to a series of studies that have specifically reviewed it. Most recent was the detailed study by the Senate Committee on Governmental Affairs in 1977, which concluded that the liaison process was effective in achieving its goal. (See vol. V of Study on Federal Regulation, prepared pursuant to S. Res. 71, 95th Cong., 2d Sess., Doc. No. 95-91.)

In addition to the formal liaison process, which handles day-to-day coordination, the top leadership of the two agencies have held periodic meetings to discuss an agenda of items of policy concern. Many other items get discussed on an informal basis as needed.

The budget cuts will require close cooperation to assure that work is not unnecessarily duplicated, but we believe the appropriate institutions are already in place to keep cooperation functioning smoothly. The FTC intends to continue its full cooperation in all necessary coordination.

SELECTION AND COST CONTROL OF LITIGATION ACTIVITIES

Question: The Bureau of Competition has attracted a lot of criticism from Congress and the business community concerning cases based on novel antitrust theories such as shared monopoly or cases that undertake to restructure an entire industry. One of the concerns is the cost-effectiveness of such litigation. What system is used to judge the priorities of proceeding with an industry structure case as opposed to a traditional price fixing case? What man hours and dollars have been allocated and spent on the Exxon case for example as opposed to the average amount of hours and dollars for other cases?

Answer: "Shared monopoly" is a term that has often been used to refer to certain aspects of the legal theory underlying the complaint in Kellogg Co., FTC Docket No. 8883. Because the matter is currently pending before an Administrative Law Judge, it would be inappropriate for the Commissioners to comment on the merits of a "shared monopoly" theory. The Bureau of Competition is submitting a separate letter, in response to certain questions of Senator Weicker, that addresses a number of issues raised in connection with the Kellogg case and the so-called "shared monopoly" theory.

The Commission can, however, address the issue of whether or in what circumstances (a) a multifirm or industrywide approach to litigation may be preferable to an approach that focuses on a single company and (b) structural relief may be appropriate, as well as the other aspects of the above question.

The Commission selects cases in order to address significant competitive problems. Two distinct aspects of this process are choice of legal theory and selection of necessary and appropriate remedy. Choice of a legal theory depends on the facts of the alleged law violation; ultimate remedy selection, on the other hand, comes after proof of violation and turns on evaluation of what action is required to remedy the effects of the violation.

Whether to adopt a multi-company approach in litigation, or to seek structural relief, depends on the nature of the alleged violation and the scope of the competitive problems that may be involved. Generally, selection of a multi-company (or industry-wide) approach will depend on factors such as how widespread the violation is, the deterrent value of a single-firm order, the fairness of a single-firm order, and the effectiveness of a single-firm order in restoring competition to the market. With respect to relief, conduct-oriented orders are usually less costly to impose and enforce and are the form of virtually all past Commission orders under Section 5 of the FTC Act. Where a conduct order may not be sufficient to prevent further law violations and erosion of competition, or is not effective in restoring competition or permitting effective compliance monitoring, a structural remedy should be considered. Most commentators have agreed that the availability of structural remedies is important to effective antitrust enforcement.

The Commission is strongly committed to assuring the cost-effectiveness of its antitrust law enforcement activities -- both in determining whether to litigate a theory of violation and in ultimately selecting an appropriate remedy. Maximizing the effectiveness and limiting the costs of litigation are integral parts of Commission and Bureau case selection and management procedures. The anticipated cost of obtaining effective relief is always a critical element of the Commission's consideration of whether to pursue litigation. Investigations that have not promised effective relief at a reasonable cost have been terminated, not litigated. Where effective relief from an alleged violation is possible, the Commission attempts to structure the theories of its complaint to minimize the costs of obtaining that relief. And the Commission maintains a variety of procedures to limit to the extent possible the actual costs of litigation. The Commission's Administrative Law Judges have responsibility to control litigation to avoid unnecessary cost or delay. The Bureau of Competition and the Commission monitor the costs of all matters through monthly reports and quarterly budget review sessions.

Ultimate selection of appropriate relief also reflects a strong commitment to cost-effectiveness of Commission enforcement activities. As a matter of fairness, a "Notice of Contemplated Relief" is issued in conjunction with the complaint at the outset of litigation, outlining for the named respondents proposed forms of relief that may ultimately be considered if a violation is subsequently proved. Remedies are ultimately determined by the Commission only after trial on the merits of the alleged violation and full exploration of the alternative forms of relief specified in the Notice. While the Commission's responsibility to the public is to order that relief which is necessary and appropriate to remedy the proved violation, the Commission is sensitive to the costs imposed on respondents and seeks to minimize those costs so far as possible, consistent with maintaining the effectiveness of the remedy. Respondents have the right through established procedures to request subsequent Commission reconsideration and modification of orders as well as the right of appeal to the courts from a Commission order.

We estimate that expenditures in the Exxon case from inception in July 1973 to date total about $10.4 million. This is based on (1) the Commission's records of expenditure by program, which have been maintained since July 1, 1974 and indicate that about $9.5 million has been invested in this case since that time, and (2) extrapolation of the average costs during this period to estimate the costs from July 1973 to June 30, 1974. While this is the largest amount the Commission has ever invested in a single case, and is very large in comparison with the vast majority of all other Commission cases, it is not out of line with the costs of other comparable litigations carried on by the Department of Justice or private litigants.

EXPEDITING THE COMPLEX ANTITRUST CASE

Question: I notice that the FTC issued an 1800 page subpoena in the Exxon case. Subsequently, the Administrative Law Judge required the government counsel to cite the discovery documents on which he relied in the statement of issues. It would seem that this cumbersome process suggests a need to require more specific complaints when cases are filed, narrowing the issues and reducing the amount of time for a case. What steps can be taken to accomplish this result?

Answer: The 1800 page subpoena, which in fact included nearly identical subpoenas to eight respondents, was never actually issued. The FTC staff reconsidered its investigatory needs and reduced the subpoena to 57 pages per respondent. This latter subpoena is what was eventually issued.

Nevertheless, the Commission is quite aware of the tendency in complex antitrust litigation for complaints and discovery requests to be drawn in an overly broad fashion. In the past several years the FTC has undertaken significant efforts to expedite its antitrust cases and to improve the procedures under which its cases are tried. In 1978, a Working Group was appointed to attack the problem of delay. The Group made a series of useful recommendations. Later in 1978, the FTC was represented on the National Commission for the Review of Antitrust Laws and Procedures (NCRALP), which issued a report in 1979 containing recommendations on the handling of large antitrust cases. Our Commission has responded to both of these reports and to the FTC Improvements Act of 1980 by making a number of rule changes and issuing internal staff directives which should reduce the time and expense of trying an FTC antitrust case.

Among the areas covered by rule changes are: time limits for various phases of a case; limits on the scope of discovery; and consolidation of actions and separate trials of issues. Additional attention has been given to the use of sanctions to make time limits effective. Staff directives have established internal deadlines, procedures for ensuring that duplication of specifications in subpoenas does not occur, and procedures for confidential treatment of documents. A number of rules changes were made to conform to requirements of the FTC Improvements Act of 1980, including several that put more control over subpoenas into the hands of Commissioners. Perhaps most important, the Commission has made it clear to staff by repeated example that overly broad complaints and unnecessarily burdensome subpoenas will not be approved.

COORDINATION WITH OTHER AGENCIES

Question: Some of the industries which come under special attention by the Bureau of Competition and to which considerable resources are devoted are regulated by other government agencies. What steps are taken to avoid duplication of effort in studying these industries, requesting documents already in the hands of another government agency, and forming a judgment about the competition situation in an industry which is structured in part, in response to Federal regulation? Please provide me with examples of coordination with other agencies, if possible.

Answer: On certain occasions, the Bureau of Competition conducts studies or investigations of the competitive process in industries that are subject to regulation by other agencies of the Federal Government. Although the Commission devotes a good deal of its antitrust law enforcement resources to sectors of the economy that generally are not subject to such regulation -- and although investigations frequently concern industries that have little or no involvement with other agencies -- some sectors receiving antitrust scrutiny are regulated to some degree by other agencies.

For example, the Department of Health and Human Services is a large regulatory presence in the health care area, while the Department of Energy has regulatory responsibilities in the energy sector; the Bureau of Competition is active in both of these fields. Similarly, both the Department of Transportation and the Interstate Commerce Commission regulate certain aspects of the transportation sector, an area in which the Commission has an antitrust program; and in the food industries, where the Bureau conducts a number of litigations and investigations, the Department of Agriculture and the Food and Drug Administration play major roles. Other agencies -- such as the Environmental Protection Agency -- also have responsibilities in various industries that have been subject to Commission antitrust scrutiny.

In each of these areas of the economy, however, there are ways to avoid or minimize duplication between the Commission's efforts and those of other agencies. First, there is little or no regulation of major portions of each of these sectors of the economy, and it is largely in these unregulated portions that the Bureau of Competition is active. Thus, by carefully screening and selecting the competitive problems and issues that it pursues, the Bureau of Competition is able to deal with pressing competitive problems in various industries that account for substantial portions of the consumer's dollar -- such as energy and health care -- while avoiding conflict with or duplication of the work of other agencies.

The Bureau (as well as the Commission generally) also maintains close and continuous liaison with agencies that play a significant regulatory role in industries subject to investigation. The Bureau staff consults with the Department of Health and Human Services concerning various health care issues, with the Department of Energy in connection with a number of competitive issues in the energy sector, and with several government agencies in connection with its transportation work; and, of course, the Commission coordinates constantly with the Department of Justice so as to prevent duplication in the antitrust enforcement functions of the two agencies. Consultation between the Bureau and other agencies has helped to highlight those agencies' important regulatory concerns, so that the Commission's antitrust enforcement activities are in harmony with those concerns to the maximum extent possible.

Another important way to eliminate duplication of effort is to seek information directly from other agencies rather than from the members of an industry. Rather than send requests or subpoenas to industry members, the Bureau of Competition often asks other agencies for documents and other information that may bear on competition in an industry under investigation. Several examples will illustrate this process:

-- the staff in the Bureau's non-petroleum energy and minerals division has on occasion consulted with or obtained information from the Bureau of Mines' specialists and Federal Emergency Management Agency personnel in connection with certain investigations; and in another matter, this staff received guidance concerning technological features of the relevant industry from the Department of the Navy;

-- another example involves the Bureau's petroleum industry staff, which at various times has requested information from the Department of Energy, the Department of the Interior, and the Department of Justice, so as to dispense with the need to seek the information from private firms;

-- the staff with responsibility in the drugs and medical supplies field regularly consults with the Food and Drug Administration, a process that has yielded valuable knowledge of the workings of various industries and helped the staff to limit and focus its requests for information from firms;

-- in connection with an investigation in the food sector, the Commission's Denver Regional Office obtained certain information from the Commodity Futures Trading Commission and delayed sending a subpoena to a private firm in the hope that the Department of Agriculture could furnish the needed information.

In recent years the Commission has also pursued a number of alternatives to traditional investigation and litigation in addressing significant competitive issues in industries that are subject to regulation by other agencies. For example, in the transportation sector -- in which the ICC is a primary regulator (and in which the Commission is in any event statutorily prohibited from proceeding against regulated common carriers) -- the Commission and its staff have filed pleadings in a variety of ICC railroad and motor carrier proceedings. These pleadings have advocated the liberalization of rate and market entry regulation and the elimination of antitrust immunity for collective ratemaking, and have generally urged the ICC to take competitive principles into account in reaching its decisions. The staff has closely followed the activities of the Department of Justice in this field to avoid duplicative participation in ICC proceedings. Similarly, the Bureau of Competition staff has participated in a number of Department of Energy regulatory proceedings in the petroleum area, advising the Department on procompetitive ways to achieve its regulatory objectives. The Bureau has also provided its views to the Office of Education in the Department of Health and Human Services in connection with that Office's consideration of whether to designate the Liaison Committee on Medical Education as the recognized accrediting body for medical education programs. Largely in reaction to the Bureau's work in this area, the Office of Education has closely scrutinized the potential for conflicts of interest and other problems in the structure of LCME.

Finally, various statutes mandate a number of the Commission's competition activities involving industries that are regulated (or otherwise subject to oversight) by other agencies. For instance, under the Deepwater Port Act of 1974, 33 U.S.C. §1501 et seq., the Commission analyzes and reports to the

Secretary of Transportation on the competitive issues arising from applications for licenses to own, construct, and operate deepwater ports; under the Outer Continental Shelf Lands Act Amendments of 1978, 43 U.S.C. § 1331 et seq., the Commission consults with the Attorney General, who advises the Secretary of the Interior on the competitive implications of proposed Outer Continental Shelf oil and gas leases and leasing regulations; and under the Energy Policy and Conservation Act, 42 U.S.C. §6272 (as extended by Pub. L. 97-5), the Commission discharges several monitoring and reporting functions pertaining to oil company participation in the International Energy Program, United States participation in which is under the overall supervision of the Departments of State and Energy.

Question: I am aware of certain situations where the FTC has undertaken investigations into professions that are traditionally regulated by the individual states. In light of the current administration's desire to return regulatory responsibility to the states, what plan if any do you have to allow such professions to monitor their own activities based on individual state law, thereby avoiding any possible duplications of effort by state and federal governments?

Answer: The FTC's work involving the professions is conducted by both its Bureau of Competition and its Bureau of Consumer Protection. In all these activities, the Commission recognizes the legitimacy of voluntary self-regulation by the professions and the importance of state regulation that protects the public and ensures the delivery of quality services.

The FTC Bureau of Competition's enforcement work has always focused on whether particular private groups have violated the antitrust laws by engaging in such illegal activities as price-fixing and boycotts. Such antitrust investigations are in no way inconsistent with state regulation or with professional regulation serving the public and the legitimate needs of the professions. Certification by medical speciality societies is an example of self-regulation that is reasonable unless the system is subverted and abused, and ethical rules designed to prevent deceptive advertising are an example of self-regulation that was expressly authorized in the FTC's recent case involving the American Medical Association. The Commission has not undertaken antitrust law enforcement where state law displaces competition with a scheme of active state supervision. Duplication of law enforcement effort is avoided through the FTC's cooperative and efficient working relationship with the state attorneys general.

The work of the Commission's Bureau of Consumer Protection has centered on state and private regulations that may unreasonably lessen competition without compensating benefits in serving the legitimate interests of the profession or protecting the public from inferior services. This approach is entirely consistent with the deregulatory goals of the Reagan administration. In these situations, the Commission has developed model state laws and issued informational reports for the consideration of the states, and, on one occasion, has issued a trade regulation rule under the Magnuson-Moss Act removing state-imposed restraints on truthful advertising of eyeglasses and other ophthalmic services. The rule was issued after the restraints were found to cause substantial economic injury to consumers and to contravene a basic federal policy of freedom of speech in the dissemination of commercial information. That rule is now on remand from the federal court of appeals. Any further rulemaking initiatives by the Commission are, of course, subject to congressional oversight and legislative review under the Federal Trade Commission Improvements Act of 1980. In all its work, the Commission is committed to working with the states to try to develop regulatory approaches that serve the professions and the public, without need for federal intervention.

SUBCOMMITTEE RECESS

Senator WEICKER. The subcommittee will reconvene at 1 p.m., this afternoon.

[Whereupon, at 11:30 a.m., Tuesday, April 21, the subcommittee was recessed to reconvene at 1 p.m., the same day.]

(AFTERNOON SESSION, 1 P.M., TUESDAY, APRIL 21, 1981)

NONDEPARTMENTAL WITNESSES

Senator WEICKER. This afternoon we will begin this session of hearings on the nondepartment or outside witnesses, within the various jurisdictions of the subcommittee. We have as our first witness a former colleague, a friend, a very distinguished American, Senator Sam Ervin. Mr. Chairman, I must confess, I miss you around here.

GROCERY MANUFACTURERS OF AMERICA, INC.

STATEMENT OF FORMER SENATOR SAM ERVIN, REPRESENTING THE GROCERY MANUFACTURERS OF AMERICA, INC.

Senator ERVIN. Well, thank you.

Senator WEICKER. This place, sometimes really gets my goat. At least I had one of the great learning experiences of my life under your leadership. For that I will always be grateful.

Senator ERVIN. You and I had the pleasure, at least I had the pleasure of being across the hall from you in offices for many years. You were a great service to your country in the Watergate, because you were determined to get to the truth.

Senator WEICKER. Thank you.

Senator ERVIN. Mr. Chairman, I am Sam Ervin of North Carolina, who had the honor of being a U.S. Senator from that State during the 20 years preceding my voluntary retirement at the end of 1974.

I appear before you as a simple country lawyer representing the Grocery Manufacturers of America, Inc., on what is a complex issue. GMA is the trade association for the Nation's leading manufacturers of food and grocery products.

The reason for my appearance here today is to express fundamental concern over the notion of lawmaking by international organizations. More specifically, I am troubled by developments which have led to the draft international code of marketing of breastmilk substitutes by the World Health Organization (WHO) of the United Nations. The draft code will be taken up by the World Health Assembly, the policy arm of WHO, sometime next month.

I would like to clarify at the outset that GMA takes no position on the use of infant formula as a substitute for breast feeding. Rather, our concern is that this code, if adopted, will establish a dangerous precendent of one law to control the worldwide advertising, labeling, and marketing of infant products. When I say, "infant products", I do so deliberately and to point out to the members of this subcommittee that we are dealing with far more than the mere "breastmilk substitutes" noted in the draft code's title. This document is so broad that it attempts to regulate the marketing of virtually all products consumed by infants and young children, including pureed meats, vegetables, and fruits; all milk products ranging from fresh whole milk to condensed or nonfat dry milk; strained fruit juices; cereals; teething cookies; breads; cheese; vitamins; and numerous prepared foods.

The prohibitions that apply to all of these infant products are simply unacceptable. All advertising and promotion of these products is forbidden. Marketing personnel, in their business capacity, may have no contact with any pregnant women or mothers. Distribution of these products, whether as gifts, samples, or even disaster relief for families in need, is expressly prohibited. Onerous labeling requirements, including a ban on using pictures of infants on product labels, are also part of this draft code, to name but a few of its prohibitions.

A brief discussion of the background of this matter is in order. Beginning in the early 1970's, the United Nations agencies, including the WHO, medical and scientific groups and others, became disturbed by a decline of breast feeding in developing nations. One thought put forth at the time was that the decline was attributable to the promotion and marketing of bottle feeding. This concern developed into an effort to fashion a worldwide law to govern the marketing of infant formula in all those sovereign and diverse nations which are members of the WHO, including the United States.

The legal foundation for this extraordinary venture is complicated by the interplay of international and domestic law but perhaps I can simplify it. At international law, there exist only agreements between sovereign nations—there is no distinction drawn between treaties and executive agreements. This distinction is drawn, instead, from the Constitution of the United States.

The Charter of the United Nations came into force as international law on October 24, 1945. Under our Constitution, the charter is a treaty which we consented to by the Senate, and thereafter ratified by President Truman on August 24, 1945. The charter authorized the later establishment of specialized agencies within the United Nations by separate international agreements. Treaties, of course, are the law of the land under our constitutional system.

The World Health Organization, a specialized agency of the United Nations, was established under international law on April 7, 1948, to exercise the power of that body to make recommendations concerning international health, and to promote "the attainment by all peoples of the highest possible level of health". Under our Constitution, it was formed by executive agreement, rather than by treaty. In order for an executive agreement to have vitality under our law in an area of shared executive/legislative powers, that is, foreign commerce, it must be based on a treaty or statute. Executive agreements which meet this test are also the law of the land.

The congressional authority for the executive agreement creating WHO is a joint resolution of June 14, 1948—S.J. Res. 98—passed by both Houses of Congress and signed into law by the President with the full force and effect of any legislative enactment. The Resolution authorized our President to accept membership in WHO; provided certain administrative and budgetary controls over our delegation; authorized our withdrawal under specified circumstances; and last, set forth a preservation of sovereignty clause as follows:

Section 5. In adopting this joint resolution, the Congress does so with the understanding that nothing in the constitution of the World Health Organization in any manner commits the United States to enact any specific legislative program regarding any matters referred to in said constitution.

This clause, which limits the obligation of the United States to WHO, reflects some sensitivity to the fact that, under our constitutional scheme, Congress is the lawmaker, even in the foreign affairs area. The executive branch only exercises powers conferred by the constitution or, through the wisdom of Congress, by statute. If ever there exists a conflict between a treaty or executive agreement provision and an act of Congress, neither has intrinsic superiority over the other. The one of later date prevails.

No action taken by WHO alone can result in the creation of U.S. law.

Nevertheless, the draft international code of marketing of breastmilk substitutes—hereafter called the draft code—could have a different impact on the law in other nations where U.S. companies operate. Moreover, it blurs the constitutional distinction between the making of law and the administration of law. The former is within the province of the Congress; the latter is the responsibility of the Executive.

The draft code, which was cleared by the executive board of WHO in January 1981, will be taken up by the World Health Assembly in May 1981, in the form of a regulation or a recommendation. The international agreement creating WHO provides that regulations come into force for all members after notice of adoption by the World Health Assembly, except for such members who file a notice of rejection of reservation. Recommendations, on the other hand, do not go into force for member countries under the international agreement, except to the extent that affirmative legislation is enacted by member countries.

If the United States supports the draft code in the World Health Assembly and the World Health Assembly approves it is a recommendation rather than as a regulation, the prestige of the United States as well as that of the United Nations will be invoked by WHO and its other advocates to induce other members of the United Nations to enact it as their domestic law.

If the code is adopted by the World Health Assembly, whether in the form of a regulation or recommendation, the reportorial requirements of the WHO agreement would be triggered. These would require each member country to report to WHO on an annual basis regarding any national action taken with regard to the code, that is, any relevant legislative or regulatory initiative.

Whether adopted in the form of a regulation or a recommendation, the draft code would provide a broad basis for the demarketing of infant foods.

But submitting the draft code to the World Health Assembly for approval as either a regulation or a recommendation, WHO is seeking to dictate to members of the United Nations a uniform law governing the marketing and the use of a broad range of infant foods and related articles within their borders. U.S. companies operate in these nations.

Under article I, section viii, clause 3, Congress has the power to regulate foreign commerce. In so doing, it is obligated to safeguard the interests of American manufacturers and distributors engaged in marketing products within the scope of the draft code. Moreover, Congress finances by appropriations 25 percent of the activities of WHO. For these reasons, Congress owes to our country and the world the duty of scrutinizing with care the impact which the draft code will have upon American industry and international commerce if it is approved in either form by the World Health Assembly at its meeting next month, that is, May 1981, and the duty of assisting the executive department of the Federal Government in formulating an intelligent and courageous position for the representatives of the United States to take with respect to the draft code at the meeting. Owing to the nearness of the meeting, time is of the essence in this endeavor.

By scrutinizing with care the draft code, Congress will discover that its approval by the World Health Assembly either as a regulation or a recommendation will have a highly inimical impact upon the interests of American industry and international trade with respect to the products within the scope of the code. Besides, it is not well designed to promote the value of infant health and nutrition that it was professedly formulated to protect.

Before explaining why these things are true, I will comment briefly upon the nature and professed objective of the draft code.

The draft code is designed to regulate completely, drastically, and in accordance with totalitarian concepts and methods, the marketing and use by mothers of infants and young children of these products:

First, all of the milk products, foods, and beverages that I have mentioned; feeding bottles and teats; and infant formula.

The professed objective of the draft code is to encourage the breast feeding of infants by their mothers. Undoubtedly the best food for infants is the breastmilk of healthy mothers. As I have already stated, GMA has no quarrel with this fact.

Recognizing the essentiality of infant foods to the health of infants in particularly and society in general, the United States has enacted enlightened laws to govern their manufacture, distribution, and use. These laws establish sound competitive practices among manufacturers and distributors of such products, and are calculated to encourage them to provide pure foods of high quality, making them available to mothers at reasonable prices. These laws are quite unlike the provisions of the draft code.

If approved by the World Health Assembly, the draft code will have highly adverse effects on industry in the United States and on sound international trade in the products within its scope.

This is so because the draft code will virtually frustrate the power of Congress to regulate the foreign commerce of the United States in products within its scope with nations subject to it; deny the right of free speech and a free press to American companies and their competitors in their efforts to furnish these products to the mothers and infants within those nations; and forbid American companies and their competitors to engage in competition in marketing such products in those nations.

Congress regulates the foreign commerce of American companies which operate in other nations by enacting laws authorizing Federal executive agencies to negotiate agreements on their behalf with these foreign nations in order to govern such commerce, or by permitting American companies to engage in such commerce under agreements negotiated by themselves with the nationals of such other nations.

The draft code regulates with complete, drastic, and totalitarian precision every aspect of the marketing, distributing, and using of infant products in foreign nations subject to it, and defines with complete, drastic, and totalitarian precision every permissible activity of every person involved in any way in such transactions.

By so doing, the draft code virtually outlaws the exercise of discretion by any one, and makes it impossible for American companies to operate in nations subject to it under agreements negotiated by Federal agencies or themselves. Hence, it frustrates the constitutional power of Congress to regulate the foreign commerce of the United States in the products within its scope in nations which may have it as their law.

Freedom of speech and freedom of the press are revered by Americans because they are enshrined in the Constitution, and have been our way of a pragmatic value beyond calculation in all the affairs of human beings, including our intellectual and commercial activities.

This is true because the best test of the soundness of a concept or the goodness of a product is its ability to win acceptance in an intellectual or commercial marketplace where different concepts or products compete for the minds of all people.

The experience of generations of Americans has also taught us the essentiality of competition among commercial competitors who manufacture and market products for the consumption of human beings. Competition blesses both the producer and the consumer. It blesses the consumer by inducing the producer to endeavor to furnish him a good product at a reasonable price, and blesses the producer by assuring him that if he succeeds in his endeavor a satisfied consumer will return to him for further trade.

The draft code is a totalitarian instrument. It is based on two assumptions. The first is that its drafters possess all the truth in respect to the matters and products within its scope, and that others possess none. The second is that it is the function of the drafters of the draft code and the governments of nations subject to it to compel acceptance by and obedience to the truth monopolized in the code by all human beings within their jurisdictions.

These propositions are made indisputable by the provisions of articles 4, 5, 6, 7, 8, 9, and 11 of the draft code. These articles give these crucial commands to the government of every nation subject to it:

First, the Government must insure that what the code calls "objective and consistent information" is provided on "infant and young child feeding for use by families and those involved in the field of infant and young child feeding."

Second, such information must conform in all respects to the specific standards embodied in the code itself.

Third, the general public, the mothers of infants and young children, the families of such mothers, and those involved in the field of infant and young child nutrition residing in the nation must be denied access to information from any other source relating to matters and products within the scope of the code.

The draft code reinforces these totalitarian commands by numerous prohibitions which forbid all manufacturers and distributors operating in a nation subject to the code to exercise free speech and freedom of the press or to engage in competition with each other in their efforts to market infant products and related articles used by mothers of infants and young children.

Considerations of space and time preclude an enumeration of all these prohibitions. Hence, I mention only a few of its illustrative prohibitions. These illustrative provisions expressly forbid all manufacturers and distributors operating in a nation subject to the code to engage in any of these activities in seeking to market any products or articles within the scope of the code:

One, to advertise to the general public or otherwise to promote the sale or use of any such product or article.

Two, to place on labels of such products or articles any information, even pictures of children, other than that specified by the code.

Three, to demonstrate how such products or articles are to be used in feeding infants and young children.

Four, to donate information, products and articles to health care systems and institutions unless they are requested to do so by the government for that purpose. And even in such instances, the things donated can be used outside such institutions only if they are distributed by them.

Five, to seek any direct or indirect contacts of any kind for business purposes with pregnant women or mothers of infants and young children.

Six, to distribute to pregnant women or the mothers of infants and young children any gifts or articles or utensils which may promote the use of infant products.

Seven, to provide, directly or indirectly, to pregnant women, mothers or members of their families, samples of products within the scope of the code.

Eight, to pay any employee any bonus based upon the marketing of any product or article within the scope of the code.

When all is said, the manifest objective of the draft code is to insure that no pregnant woman or mother of infants or young children in a nation subject to the code's provisions is to receive any infant product unless her need for it is first determined by an official of a governmental health care system or a health care worker acting under governmental auspices.

In concluding my analysis of the draft code and my discussion of the adverse impact it will have on American companies engaged in foreign commerce and their foreign competitors, I deem it appropriate to make some additional observations.

Overzealous advocates of the draft code at home and abroad seek to prevent a scrutiny of its astounding provisions by making foul assertions that reputable American and foreign manufacturers and distributors of products and articles within its scope, who challenge its wisdom, are engaged in killing babies for filthy lucre.

I do not insinuate that WHO is responsible for these foul accusations or question its good intentions. I do maintain, however, that in seeking to convert the draft code into the domestic law of members of the United Nations, WHO succumbs to the temptation which, as George Washington warned us in his farewell address: "lies in wait for all men clothed with a little brief authority." As Washington said: "they love to exercise power and are prone to abuse it." The draft code constitutes a gross abuse of power.

For reasons state, the draft code virtually nullifies the constitutional power of Congress to regulate American's foreign trade in products and articles within its scope. The draft code absolutely destroys for American and foreign manufacturers and distributors of the essential health products and articles within its scope—freedom of speech and of the press, and the right of competition—which the experience of generations of Americans shows to be indispensable to honest and productive commercial enterprise in all its aspects.

I insist that the representatives of the United States in the forthcoming meeting of the World Health Organization urge that organization to reject the draft code. Furthermore, American taxpayers should not be compelled to finance in any measure WHO's efforts to impose this totalitarian code on the people of other nations.

The formulation of the U.S. position before the World Health Assembly should be subject to the scrutiny of Congress. If the executive branch of our Government supports the draft code, in the form of either a regulation or a recommendation before the World Health Assembly, it will be flaunting the true spirit of the very joint resolution which is the foundation for WHO under our law. Further, such action could constitute an intrusion on express congressional authority over the regulation of commerce. Serious consideration should be given to any idea which suggests the desirability of surrendering the regulation of any U.S. interests to artificial majorities within the international community.

It is my opinion that this international regulatory effort by WHO was ill-conceived; its end result is antithetical to American ideals and interests; and Congress should take this occasion to reassert its constitutional role as lawmaker for our country.

I strongly urge this committee to give serious consideration to the draft code and to participate in the formulation of the U.S. position that will be asserted before the World Health Assembly next month. As a model for national legislation, the draft code is quite less than satisfactory. As a possible stalking horse for the establishment of an expansive international regulatory effort by WHO, it is a dangerous precedent. Finally, it raises the question of whether our foreign aid and technical assistance authorizations and appropriations ought not to contain a provision prohibiting the expenditure of U.S. contributions for these international regulatory forays.

Thank you. Mr. Chairman, I was reminded of our Lewis Carroll's "Through the Looking Glass." Lewis Carroll was the creator of "Alice in Wonderland," and I never thought that any intelligent group of people would ever formulate such a totalitarian code, that they have asked the United States to finance for them a fourth of the cost of imposing it on the other nations, something of which is based on the idea these governments are not going to have all the truth; these people can't get truth from any other source. I thought about the time the Queen was talking to Alice about importance. And Alice said, "Well, I just can't do that." The Queen said, "If you had a little more practice maybe you could." Alice said, "I just can't believe impossible things." these are impossible things because I read it.

Here is an organization that proposes to destroy freedom of speech, it proposes to destroy the power of Congress to regulate the international trade of the United States on these items, it proposes to abolish competition among competitors and to let the Government be the sole dictators of everything.

I can't imagine the people of the United States ought not to be put to having to finance such a totalitarian endeavor. I think this is even too totalitarian for Russia. I thank you, Mr. Chairman.

Senator WEICKER. Mr. Chairman, thank you very much. I think that without going into the merits in a scientific sense, I have some of the reservations that you so eloquently expressed here today. To put it in reverse, I remember several years back when various and sundry people, both in the private sector, and the Government sector, kept on applying a different standard of constitutional behavior as soon as somebody left the shores of the United States even though they are an American. I don't understand it. It seems to me even though somebody leaves our shores, they are an American citizen, the Constitution applies. What worries me here about this action, clearly—clearly—this document would be unconstitutional if anybody attempted to enact it into law into this country, or whatever else it is, it is unconstitutional. I am just wondering, because you bring it into the international arena, does that make it acceptable? I don't think that unconstitutional behavior because it goes offshore is any more permissible insofar as nations are concerned than individuals. The same thing worries me—I will tell you a little thing that gets a little tiresome, I went through this exercise a little ways back when we got into children's advertising on television. I was the first one to raise questions about the FTC's proposal.

I am a defender of the FTC, I think it performs a good function. I did raise some questions as to whether or not there were first amendment rights we should take a look at. I said at the time, why do people in the name of children feel they can step over the line, on the unconstitutional side of the line. There are some basic constitutional rights that are involved here. Just because you want to put an emotional sounding word on it as to who you are trying to benefit, we are not going to play that game. That document, the thoughts it stands for become very meaningless. So it is this area I am concerned with. I don't attempt to say if it is correct or not as to the science of the matter. I speak very much also as a lawyer and one who has some reservations whether or not this is pulled into our arena domestically, whether it would be called constitutional, it is unconstitutional.

Senator ERVIN. I think the greatest contribution the Constitution makes to America is the first amendment. It prevents our Government from trying to tell the American people what truth is. The importance of that, I think, lies in this:

I think every step that the American people have taken on the road to freedom has been due to the rights they had to exercise, freedom of thought and freedom of speech, and I think the reason we have been a great industrial nation is because we had free competition for the minds of men, and in my mind, for anybody to ask the United States to finance a proposition that is based on theory that the governments of these countries are taking dictation from an international organization.

Senator WEICKER. The interesting thing is from a scientific point of view, I don't think anybody has ever raised the issue. Many of the products under discussion here have obviously benefited, many thousands within the United States. Now granted the circumstances are different here. Nobody is launching an attack against the product, it is the use of the product in another environment. That becomes an all together different case, as if you are protesting something that inherently is of a dangerous nature. It is not in the product, it is in the user, or the circumstances under which the products are being used.

They are not easy. Who wants to be accused, neither Sam nor myself want to be accused, of being against the children internationally? That is not the point here. The point is there are some clear-cut concepts which have always been deemed important, with certain elements approved and certain other constitutional rights all go into the mix.

You can't just throw those out the window because you put the children out there. None of that disappears. I will say for the Chair and for the witness, that we are for children. That is safe for now.

Senator ERVIN. So am I.

Senator WEICKER. But as importantly, the matters of proof, the matters of the Constitution, certain presumptions of right and wrong, they are all involved here and they are important also.

Senator ERVIN. I think women who bring these children into the world can be trusted with the truth and I think those children know better.

Senator WEICKER. Thank you.

I want to point out at this time now, we have a great number of public witnesses and I want everybody to be heard. I believe counsel, the director for the committee has already explained the ground rules. I really don't want to sit here and gavel anybody down. Let's try and go ahead and self-regulate. It will be a lot better and fair to everybody who wants to appear. I am going to say, if the voluntary approach doesn't work, then we will go to one of those regulations everybody seems to decry at this point.

So our first panel will be discussing the National Telecommunications Information Administration budget. We have with us Mr. Frank W. Norwood, executive director of the Joint Council of Educational Telecommunications; Paul Taff—I want to make sure I have Connecticut down here—president and general manager, Connecticut Educational Telecommunications; and Ronald Andrade, executive director of the National Congress of the American Indians. Mr. Norwood, if you would proceed with your statement.

All statements will be placed in the record in their entirety. I am going to say that once and for all and allow each person proceed in the way they deem best appropriate. Go right ahead.

NATIONAL TELECOMMUNICATIONS INFORMATION ADMINISTRATION

STATEMENT OF FRANK W. NORWOOD, EXECUTIVE DIRECTOR, JOINT COUNCIL OF EDUCATIONAL TELECOMMUNICATIONS

Mr. NORWOOD. Thank you, Senator. I would like to take time to talk a little bit about history because the Joint Council on International Telecommunications was formed in 1950 by some of the leading educational organizations in the United States and its purpose was to secure the reservation of channels for education, what has become public television, so we feel a parental responsibility in this matter.

The reservation of channels is accomplished by the joint council and its colleagues is really not of much value unless there are stations to put on those channels. The program that began as the educational television facilities program in the Department of Health, Education and Welfare in 1963 is what has been continued as the public telecommunications facility program in the Department of Commerce under NTIA. So I want to speak first of all to the importance historically of that program which really turned the dream that the JCT and others shared in the 1950's into the realities of the public television in the 1960's and 1970's.

I want to say that it is well to remember that that job has not been completely done. By the statistics that have been compiled, there are still some 30 percent of the people in the United States—the accurate figures are in my testimony—who are out of the range of public television and even still more out of the range of public radio stations.

So the system itself is not overworked. Furthermore, the public television communications program in Commerce has expanded its goal and has encompassed a number of other aims. In 1950, the new technology was television. In 1980, there are many more communications technologies. The program, when it moved to the Department of Commerce, expanded to make funding available for construction of other kinds of systems for use of cable television, for the instructional television service and for other communications technologies.

I particularly would like to focus attention on the instructional television fixed service which, again, has been available since the early 1960's. It is a microwave service for instructional television capable of direct transmission of as many as four channels. It is in use by schools, school systems to bring instructional television to schools. It is in use by medical schools to teaching hospitals with a main campus and by higher education for a variety of purposes, one of which is becoming increasingly important, the delivery of graduate programs to students in their place of work. Stanford University provides one example. People are able to continue work on their engineering degrees at Stanford, advanced degrees without driving the freeway, trying to find an hour parking.

They can, through the instructional television fixed service at Stanford go to the conference room or cafeteria in the plant where they work.

As the need for continuing education increases, certainly that is going to have a greater and greater role. This is the first time under this program there has ever been any Federal aid to get these systems constructed.

The FCC is now threatening to take away some of these channels, perhaps all of them, on the grounds that they have been underutilized, and so just at a time when help is becoming available, the FCC would propose to take the channels away. If you destroy this program, I think that is the doom of the instructional television fixed service almost certain.

Another thing that has happened is that the program provides for planning grants and encourages minorities and women to enter the telecommunications field and I am sure Mr. Andrade will speak to that point so I will leave that to him.

The second thing I would like to say is that NTIA has before it a job of great importance in supporting the administration and the Congress in the preparations for the various international meetings which are ahead of us. There is a regional conference on the Broadcast Satellite Service coming up in 1983. We have been through world administrative conferences. These are held by the International Telecommunications Union. There are more that are coming, and the resources are needed in this country—Senator Goldwater has been particularly concerned about this—for this Nation to prepare its case and make it adequately in these international forums.

And finally one last thing that I will say and that is to talk about a modest program which has already begun in the NTIA, the public telecommunications services program. This is designed to encourage the transition of public service organizations to enable them to enter the agent satellite communications. I won't go forth on how agent satellite communications has grown in the last few years, but the special difficulties and this program points the way in providing some moderate supports to those organizations who want to assist the public service community in taking advantage of what clearly the most significant new communications technology of the decade is; Thank you very much.

Senator WEICKER. Thank you very much, Frank.

[The statement follows:]

STATEMENT OF FRANK W. NORWOOD

Senator Weicker, members of the subcommittee, I'd like to express my thanks for the opportunity to appear this afternoon. I am Frank W. Norwood, Executive Director of the Joint Council on Educational Telecommunications, a consortium of national and regional organizations and associations in education, public broadcasting, and library and information services.

The JCET was founded in 1950 as the Joint Committee of Educational Television, and without the effort which it led to persuade the Federal Communications Commission to reserve channels for noncommercial broadcasting, what we now know as public television would never have been possible.

But reserved channels without operating stations would be of scant value. The growth of noncommercial television was painfully slow until the Congress passed the Educational Television Facilities Act of 1963, which provided Federal matching grants for the construction of new stations. Without the Congress's wise action in establishing that program, public television as we know it would likewise have been impossible.

What began as the Educational Television Facilities Program has, through the years, gone through several modifications, the most recent being its transfer from the Department of Health, Education and Welfare to the Department of Commerce in the Public Telecommunications Financing Act of 1978.

Now, the Administration proposes to put an abrupt--and, in our view untimely--end to the program. The job that was begun in 1963 is not yet finished. Ten percent of the American people are still, almost thirty years after the JCET persuaded the FCC to set aside channels across the nation, beyond the reach of the public television broadcast signal.

More than one third of the population is out of range of public radio, a service whose history is much longer that public television's, but whose real growth has been much slower, dating from the time the Educational Television Facilities Program was expanded to include support for public radio stations, as well.

Many of the unserved and underserved populations are those in rural and otherwise sparsely populated areas where local resources are limited. Help is needed where only the Public Telecommunications Facilities Program can provide help. Public stations--both radio and television--may be able to sustain their operations with support from local institutions and voluntary contributions from their listeners and viewers--once they get on the air. But it is difficult to mount a fund drive--impossible to hold a Pledge Week--before you get the transmitter on the air.

Significantly, the program has been dynamic and it has responded to changing needs. Since its transfer to the Department of Commerce's National Telecommunications and Information Administration, its legisative mandate has encompassed not merely radio and television broadcast facilities, but a broader range of telecommunications options.

The Instructional Television Fixed Service is low-cost point-to-point microwave service which allows school systems to transmit as many as four channels simultaneously to each elementary school in the district. Medical schools use ITFS, as it is known, to link classrooms with teaching hospitals; universities, such as Stanford, Illinois Tech, and Maryland use ITFS to share on-campus classes with working students in business and industry at their place of employment.

The broader scope of the Public Telecommunications Facilities Program is an incentive to the use of the most cost-effective technology: ITFS, access channels on cable systems, or whatever, rather than forcing applicants into a more expensive broadcast mode because Federal help had limited that technology.

After maintaining a policy of reserving twenty-eight channels for education and instruction for almost twenty years, the Federal Communications Commission is now threatening to end those reservations and open the band to commercial entities hawking pay television. The Commission argues that educators have not made use of ITFS (although in some cities the band is at or near capacity). But only since the advent of the Public Telecommunications Facilities Program has there been a source of financial assistance to help local educators get started.

Unlike its predecessors, the Public Telecommunications Facilities Program for the first time provided Federal support for the planning of telecommunications facilities. This has been especially helpful for minorities and women's groups which might otherwise lack the resources to get started. Increased participation by women and minorities in the ownership of telecommunications facilities is one of the legislative goals of the Program.

This program, in all its manifestations since 1963, has been one of the most successful Federal efforts to use Federal dollars to leverage investments at the state and local level. In terms of construction, and of the continued operation of public radio and television stations, Federal investments have been matched many fold.

In the current climate, the need to curtail spending is evident, and many valuable programs will be subject to the belt-tightening. But to zero-out this program, with over five hundred applications for all over the country, with evidence of more that $100 million in unmet needs, is more than mere economy.

S. 720, sponsored by Sens. Packwood, Schmitt, Pressler, and Goldwater, would reauthorize the Public Telecommunications Facilities Program at $16 million in FY '82, and lesser amounts the two years following. A strong case can be made for continuing this successful program, and at a more robust level, but S. 720 at least has the virtue of sparing the program from sudden death.

And I should like to speak in support of NTIA's overall mission. Since the report of the Rostow Commission in the Johnson era, it has been agreed by Democrats and Republicans that it is essential to have a mechanism which can provide the Executive Branch with analysis of the complex and important telecommunications issues which we face as a nation. The World Administrative Radio Conferences of the International Telecommunications Union are the forums for the making of decisions which will govern our use of the spectrum and orbit resources for many years to come. In domestic communications, both the Congress and the FCC will be considering important steps toward de-regulation, "un-regulation," and re-regulation. The NTIA's technical resources and expertise can contribute significantly to sound decision-making.

One modest program is already well-begun. The Public Telecommunications Services has supported important efforts to make available to the public service community the cost-effective benefits of satellite communications. Essentially, this is a process of technology transfer, but the complex and disaggregated educational and public service sector cannot respond as easily and as quickly to new technology and new opprotunities as can business and industry. We hope that this subcommittee will endorse and support the full four year span originally envisioned for the Public Telecommunications Services program, thru FY 1984.

STATEMENT OF PAUL TAFF, PRESIDENT AND GENERAL MANAGER, CONNECTICUT EDUCATIONAL TELECOMMUNICATIONS

Mr. TAFF. I am Paul Taff, president and general manager of the Connecticut Educational Telecommunications program. David Carley, president of NTS had hoped to be here. He sends his best to you, Senator, he is the chairman of the National Association of Public Television Stations and also a member of our board. I have Mr. Carley's statement and I wish to have it submitted for the record.

Most of the things proposed by the administration are to slow down the growth of something or reduce a portion of a cost. Here in this particular program they are talking about a total ratio as a consequence of a total rescission in 1981 and elimination for program in 1982 in successful years would indeed be severe.

Therefore we ask in summary that you maintain the current appropriation of $25.7 million and appropriate at least a comparable amount for fiscal 1982. even that amount is far less than what NTIA itself projected.

But specifically for Connecticut, we operate a statewide system of television stations and have started on a statewide system of radio systems. We are not State owned or operated, therefore, we are very dependent on the matching funds provided by the Federal Government to induce the State to make contributions toward it and to get private capital investment in there, too.

Since 1967, the HEW and the NTIA grants have been very effective in helping us get to where we are. In fact, there would not be a statewide television network and not the startup of public radio in Connecticut if it were not for the NTIA public program. We had the first public radio station in Connecticut. Governor Grasso matched the funds and made some State funds available to get started with the public radio station serving a part of the State.

Our big thing is channel 49 transmitters. All our transmitters are UHF. Channel 29 is the only station serving Fairfield County, Conn. It is the only one licensed in that area. Yet it is competing in areas flooded with VHF signals.

Through an NITA grant we have been able to start the process, increase the power of this UHF station so it can more fairly compete and bring that part of Connecticut back into the sphere of influence.

Senator, we are not afraid of cable telvision, video cassettes, video discs, et cetera, we think that whole business has been oversold. The idea that this is going to take over open broadcasting we feel is just not true. We feel these stations are going to be used more and more for education, more and more for public service activity and there are going to be people across this country who are not going to be able to afford cable television. We have it in our house only so I can see what is going on. If I had to pay for it on the idea that we needed it, I would not. It is too expensive.

There is going to be a constant need for these over-the-air broadcast stations, need for programs, obviously the equipment. There are areas now not being served at all by either public radio or by public television. There needs to be replacement of some of the aging equipment, et cetera. Here we have been asked by previous administrations to expand so there is coverage of the whole country and now we are told it is not a very good idea. Yet also some of the bills being introduced for public broadcasting right now call for a continuation as a facility and has a facility authorization in those bills and yet at the same time we are talking about a rescission, complete elimination of the 25.7. Facility programs in the HEW and NTIA is something the Congress can point to in my opinion with pride. It is a Federal program that has worked but the job is not finished and none of us should stop in the commitment not yet realized.

I can tell you specifically what is pending at the moment. Mr. Norwood mentioned NTIF. We hope to provide service to the various cable systems of educational programs but specifically without the help of this particular grant we won't be able to do it. Here we are a small State of Connecticut, we have a total of 1,216,000 dollars' worth of requests. We don't expect to get all that, but you add all that up and it is far more than the 25.7, which is very low. Thank you.

[The statement follows:]

STATEMENT OF PAUL K. TAFF

I am Paul K. Taff, President & General Manager of the Connecticut Educational Telecommunications Corporation (CETC).

CETC is a non-profit, non-commercial, state-wide broadcasting system serving the citizens of Connecticut from Channel 24 in Hartford, Channel 49 in Bridgeport/Fairfield, Channel 53 in Norwich, Channel 65 in New Haven, Channel 61 in Waterbury and radio station WPBH (90.5 FM), serving the Connecticut River Valley. We have applications before the FCC for more radio transmitters in key areas of the state to bring more public service public radio to the citizens of Connecticut.

This corporation is under the Board of Trustees, 39 in number, consisting of women, men and minorities, selected on a state-wide basis. We are the only state-wide broadcast medium in Connecticut and the board is constantly striving for broad state-wide representation.

We operate two television studios and at the present time one radio station with a studio in Hartford and one in New Haven. The television studios are in Hartford and Fairfield. We have a remote truck which makes it possible for us to telecast remotely from almost anywhere in the state.

With assistance of state money and matching federal dollars, we have been able to establish a television studio in Fairfield County. This studio is not only a part of the CPTV network, it is the studio for CPTV's Channel 49 which is the only television station licensed to Fairfield County. Unfortunately for them, this exceptional part of the state gets its principal television service from New York. It even watches a non-commercial (or public) television station licensed to Newark, New Jersey. I must add that there are quite a few Connecticut dollars going to support the Newark, New Jersey station because Channel 49's UHF signal is too weak, and we are not yet doing enough specialized Connecticut programming to change this habit. To change this orientation is one of our major goals in this coming fiscal year. The Channel 49 transmitter in Fairfield County is being upgraded with new transmission equipment funded by an NTIA grant and there will be a remarkable increase in signal strength and viewing of CPTV in Fairfield County. Television can be a very vital force in bringing that area closer to the capitol, and to the activity of the rest of the state.

We are not afraid of the proliferation of cable systems or of the predicted increased sales of videodiscs, cassettes, etc. Sales of phonograph records, tape decks and stereo tapes haven't destroyed radio - and over the air television service will be needed for a long, long time.

But so will equipment. There will be a growing demand for programs to serve those who don't subscribe to cable, because they can't afford to or it is unavailable in certain areas. Equipment will be needed to serve those areas still without public television and radio service and equipment will be needed to replace the aging technical facilities of existing stations.

The technology of educational communication is just as important to this country as the technology of space, and that of the defense department. Therefore, we ask that the funds for the facilities program administered by NTIA in the Commerce Department not be reduced.

...In 1967, HEW funding allowed us to build transmitting stations WEDW in Bridgeport and WEDN in Norwich. In that same period HEW funding equipped a black and white mobile unit with three cameras and a videotape machine as well as the necessary support equipment and provided new items of equipment for our Hartford studio such as a color video tape machine and film chain.

...In 1973, HEW funds provided a new high powered transmitter and antenna for WEDH Channel 24 in Hartford and also allowed us to purchase six color studio cameras to replace the obsolete black and white cameras in our Hartford studio and mobile unit. At the same time funds were provided for two color videotape machines.

...In 1974, the Educational Broadcasting Facilities Program provided the bulk of the funding to purchase a computer editing system, a color film chain, a portable handheld battery operated color camera and videotape recorder.

...In 1977, the Facilities Program helped fund a new color television studio for Fairfield County. This studio, which is located at Fairfield University, is equipped with color television cameras and videotape as well as switching, audio and other necessary support equipment.

...In 1978, the HEW Program helped fund a new FM radio station to serve the Central Connecticut area. This station is located in Middlefield with studios in Hartford and New Haven.

...In 1980, the Facilities Program, which by then shifted to NTIA, provided funding for a new antenna and high powered transmitter for WEDW in Bridgeport. This program is still under way. In addition, at the present time we have applications in to NTIA for: 1. an Instructional Television Fixed Service System to provide community college programs to much of the State of Connecticut at $348,900 in federal funds matched with $134,000 in Connecticut funds, and 2. an application for Electronic News Gathering equipment to be used statewide at $259,309 in federal funds, matched with $90,491 in Connecticut funds.

This funding, in the past, has made it possible to have public television to serve the whole state of Connecticut; it has made it possible to activate the first public radio station in Connecticut. Without the federal matching incentives we would not have been able to convince the state officials to supply the state's share of the necessary capital investment.

Other applicants in Monroe, Bridgeport, and New Britain, Connecticut are applying for an additional 4 radio and TV projects, asking $608,209 in federal funds, matched by $179,444 in Connecticut funds.

The facilities program is something Congress can point to with pride - as a federal project which has worked. But the job isn't finished and none of us should stop in the middle of a commitment.

STATEMENT OF DAVID CARLEY, PRESIDENT, NATIONAL ASSOCIATION OF PUBLIC TELEVISION STATIONS

The National Association of Public Television Stations is a membership organization representing the interests of most of the nation's public television licensees in the areas of planning, research, and legislation. This statement addresses the Reagan Administration's proposed fiscal 1982 budget for the National Telecommunications and Information Administration and the proposed rescission of NTIA's 1981 budget for the Public Telecommunications Facilities Program (PTFP).

We applaud the Administration's recommendation of continued funding for NTIA's electronic spectrum management and other communications and information policy activities. These are necessary and appropriate matters of federal concern.

Even more appropriate, but lacking in the Administration's recommendation, are any future funds for the Public Telecommunications Facilities Program (PTFP). The Administration has urged both an end to future facilities funding, and an abrupt rescission of all funds appropriated for fiscal 1981.

In fiscal 1980, the PTFP leveraged about $14 million in local funds with $23.7 million in federal matching grants for public telecommunications facilities construction and replacement. These grants are indispensable sources of funds for the basic equipment needed to start public television service and keep it on the air.

The facilities supported by this program are the largely-invisible, but essential basics of the television industry. Studios, transmitters, cameras, film chains, tape recorders, and video switchers are to our award-winning public television programs as flesh and blood are to the human spirit--the viscera without which creativity cannot be realized. The talent of a Beverly Sills, a Jim Lehrer, or even Big Bird goes for nought if stations haven't the equipment to capture it and deliver it in a clear signal to the public.

Public television stations need help in meeting their equipment needs because they, for the most part, are small, non-profit organizations with no working capital. Out of necessity, they devote most of their scarce funds to creating and buying programs--the "bottom line" for any public television station.

The financial pressure to produce programming leaves precious little room in our stations' budgets for their equipment infra-structure. Since its inception, the facilities program has helped stations finance basic equipment by providing funds that match local initiatives to start or improve public television service. These matching funds have become a powerful local incentive and one of the best tools public stations have going for them. At a time when non-federal support is not keeping pace with inflation, and other federal matching grant programs (such as the National Endowment for the Arts' challenge grants) are being terminated, we think the facilities program should be retained.

Facilities Needs

Television equipment needs fall into three main categories--replacement, improvement, and extension.

Replacement

Most television equipment has a relatively short useful life. For example, studio cameras last an average of eight years, tape recorders about nine-and-a-half. The transmitters that send forth public television signals die at about age sixteen.

According to figures worked out by NTIA, public television's entire stock of basic equipment of this sort is wearing out at the rate of more than $40 million per year--an amount equal to about eight percent of public television's total annual income. Our stations need to invest this much each year simply to maintain equipment at its current level of performance.

Improvement

Beyond this $40 million requirement for replacement of tiring equipment, our stations have a lot of catching up to do to achieve parity with their commercial brethren. According to a study by the Corporation for Public Broadcasting, it would take an investment of $66 million for public television stations to purchase production facilities comparable to those of the commercial stations in their markets. Even if one believes the is no need to achieve full parity with the commercial sector, it is clear that substantial funds are required to get even close.

Extension

Most importantly, a clear public television signal is still not available to substantial numbers of American taxpayers. In 1978, the Senate's report on the Public Telecommunications Financing Act noted that:

> "...while over 80 percent of the American population falls within the coverage area of public television, only 50 percent receive an acceptable quality signal. Since all taxpayers support public broadcasting, it is imperative that service to unserved or underserved populations be substantially increased." (emphasis added)

Although coverage has improved since 1978, millions of Americans remain unserved or underserved by public television. Our stations' disproportionate dependence upon UHF transmission--channels 14 to 69--is a significant handicap that leads to reception problems in many communities theoretically "covered" by a public television signal. A recent Harris poll conducted for the Federal Communications Commission revealed that, where engineering studies predict that most or all area households are reached by both UHF and VHF stations, only 49 percent of the homes can actually receive a good or excellent UHF signal, while 91 percent enjoy good-to-excellent VHF reception. Thus, while we do not take issue with NTIA's engineering projections of public television coverage, we note that the American public's practical experience with UHF signals contradicts the theoretical projections of the engineers. Since 60 percent of public television signals are UHF, it follows that NTIA's estimate of 90 percent public television coverage considerably overstates reality. In fact, new transmitters, translators, and improvements in existing UHF signals are needed to bring an adequate public television picture to perhaps one-quarter of all Americans.

A final aspect of the UHF handicap also needs to be addressed. The laws of physics dictate that one must use more electric power to transmit a UHF signal to a given geographic area than to cover a comparable area with VHF. Thus, public television stations operating on UHF channels pay substantially higher energy costs than do stations transmitting via VHF. Recent advances in transmitter technology are making it possible for these UHF stations to make capital improvements that will allow them to use less energy to transmit a technically comparable signal. However, without the facilities program, we do not know where the bulk of the funds needed for these energy-saving investments will come from.

Combining these and other needs in a thorough professional analysis, NTIA's own draft Long-Range Plan for Public Telecommunications Facilities recommended a minimum annual facilities program appropriation of $40 million. This year, 509 public telecommunications entities have submitted applications for over $105 million from the program. Thus, both the need and the demand for facilities funds far outstrip the dollars available.

Relation to Public Needs

Every grant issued by the Public Telecommunications Facilities Program is a response to a local initiative for new or better public broadcasting service.

The demand for this service is both strong and growing. Public television has never been held in higher esteem by the American people. During the past year, we've received at least fifty-one major national awards for programming excellence. In January, 42 million American families tuned in to public television during a single week, a nineteen percent increase over a twelve-month period. Nearly seven hundred thousand families voluntarily pledged contributions to their local station during the month of March alone. In the face of the biggest boom in history by cable and other new media, public television is achieving new heights of public support.

The families who use public television are a broad cross-section of America, representing every income and education level. In fact, the public television audience closely reflects the make-up of the American population in each demographic category. The public television services they enjoy are vital, not elitist--for example, the series HARD CHOICES, which in January drew an estimated 2.65 million American homes into a discussion of the ethical ramifications of genetic screening, or home learning projects that teach disadvantaged adults how to read and write. The American people obviously want a serious alternative to commercial television, and to the new forms of television brought about by advancing technology. Public television is that alternative. The facilities program helps make its services a reality.

Conclusion

The abandonment of the NTIA facilities program at this juncture would deny an adequate public television signal to millions of taxpaying citizens who want it. It would lead, slowly but inevitably, to a steady erosion of the facilities infrastructure upon which public stations, and the people themselves, have come to rely.

In a time of economic uncertainty we, as average citizens, share your concern about federal spending. We understand the need for economies. However, most of the Administration's budget cuts have been directed at slowing the growth of federal programs, or reducing some portion of current expenditures. On the other hand, the recommendation that the facilities program be totally erased, this year and beyond, is an extreme version of this general trend. The consequences of a total rescission in 1981, and elimination of the program for 1982 and successive years, would be severe. We ask that you maintain the current appropriation at $25.7 million, and appropriate at least a comparable amount for fiscal 1982. These sums would fall almost 40 percent below the amounts authorized for the program, and far below NTIA's own estimates of the capital requirements of the industry. Moreover, with the expected elimination of NEA's challenge grant program the available funds would have to be stretched even further than before. Nevertheless, we believe the funds currently appropriated to the PTFP can go a long way toward meeting the basic equipment needs of public television, enabling us to extend our reach and continue providing excellent television service to the American people.

Additional Information Provided by NAPTS

Attached are summaries of pending grant requests for FY1981 which have been submitted to the National Telecommunications and Information Administration. Included are the descriptions of proposals from Alaska, Arizona, Arkansas, Connecticut, Mississippi, New Hampshire, Nevada, and South Carolina.

ALASKA

File No. 1691PTN, Alaska Public Television, Inc., 2651 Providence Drive, Anchorage, AK 99504. Signed By: Marilynn S. Scott, Chairman. Funds Requested: $130,486. Total Project Cost: $173,982. To extend, by means of a dedicated cable television channel, PBS and local public television programming of KAKM-TV to audiences within the greater Anchorage area.

File No. 1822CRB, Alaska Public Radio Network, 2607 Fairbanks St, Anchorage, AK 99503. Signed By: Bruce Theriault, Board President. Funds Requested: $510,122. Total Project Cost: $680,722. To construct a satellite uplink near Anchorage and five receive-only satellite terminals at existing public radio stations in Ketchikan, Wrangell, Petersburg, Homer, and Barrow to extend APRN programs to all public radio stations in Alaska.

File No. 1680CTB, University of Alaska, Fairbanks, AK 99701. Signed By: Keith B. Mather, Vice Chancellor, Research. Funds Requested: $150,000. Total Project Cost: $200,000. To improve the production capability of KUAC-TV, ch. 9, Fairbanks.

File No. 1556PRTB, University of Alaska, Fairbanks, AK 99701. Signed By: Keith B. Mather, Vice Chancellor. Funds Requested: $9,959. Total Project Cost: $19,412. To plan for the expansion of the signals of KUAC-TV and KUAC-FM into communities presently outside the grade B coverage area, which are inhabited by Alaskan Natives.

File No. 1802CTB, Capital Community Broadcasting, 224 Fourth Street, Juneau, AK 99801. Signed By: Charles M. Northrip, President & General Manager. Funds Requested: $214,170. Total Project Cost: $285,560. To extend the signal of KTOO-TV by translator to Lemon Creek and Switzer Creek, provide full-fledged remote production capability, and provide a satellite uplink to permit intra-State distribution of programming.

File No. 1785CRB, Capital Community Broadcasting, 224 Fourth Street, Juneau, AK 99801. Signed By: Charles M. Northip, President. Funds Requested: $113,342. Total Project Cost: $151,122. To extend the signal of KTOO-FM by translators to Lemon Creek/Switzer Creek, upgrade the station's production capability, and provide a satellite audio uplink to permit intra-State distribution of radio programming and transmission of news feeds to the Alaska Public Radio Network.

File No. 1547CTB, Narrows Broadcasting Corporation, Box 149, Petersburg, AK 99833. Signed By: Eric T Nielsen, President & Chairman. Funds Requested: $50,628. Total Project Cost: $81,783. To expand public telecommunications services by increasing power and building two translators repeating the signal of KPSK-FM, and building a translator repeating noncommercial television translator KQ90V.

File No. 1392CRB, Sands Point Broadcasting, PO Box 151, Sands Point, AK 99661. Signed By: Steve McCombs, President. Funds Requested: $228,915. Total Project Cost: $305,220. To activate an AM radio station operating on 840KHz at Sand Point, Alaska, to serve Shumagin Islands, lower Alaska peninsula, and outer aleutians.

File No. 1327CRB, Wrangell Radio Group, PO Box 282, Wrangell, AK 99929. Signed By: Dr. Wayne Davenport, President. Funds Requested: $21,486. Total Project Cost: $370,211. To expand the facilities of KSTK-FM operating on 101.7MHz, in Wrangle, by increasing the station's coverage area by twenty-five percent, and to acquire portable remote gear to be used for locally producing programs.

File No. 1529CTN, Alaska Pacific University, University Drive, Anchorage, AK 99504. Signed By: Glenn A. Olds, President. Funds Requested: $430,334. Total Project Cost: $575,265. To provide local educational programming service in Alaska and a training facility for students in communications and instructional media programs.

ARIZONA

File No. 1304CTB, Casa Grande Union High School, 420 East Florence Blvd., Casa Grande, AZ 85222. Signed By: Alex N. Nader, Superintendent. Funds Requested: $110,000. Total Project Cost: $150,000. Request is to fund TV transmitter, antenna, monitors and time base corrector to provide over the air free TV evening programs to a majority of the population that cannot afford cable access; also to develop job skills in telecommunications.

File No. 1502CRB, Northern Arizona University, Box 6006, Flagstaff, AZ 86011. Signed By: Richard Packard, Provost. Funds Requested: $165,000. Total Project Cost: $220,000. Project will upgrade a 10 watt radio station to 100,000 watts and provide full service public radio to Flagstaff and its surrounding area.

File No. 1699CTB, AZ Bd of Regents-Univ of Arizona, KUAT-TV, Tucson, AZ 85721. Signed By: Sherwood Carr, Contracting Officer. Funds Requested: $479,377. Total Project Cost: $639,169. To replace obsolete studio cameras and video tape machines with state-of-the-art equipment.

File No. 1526CRB, Apache Radio Broadcasting Corp, PO Box 700, Whiteriver, AZ 85941. Signed By: Billy Kane, Chairman. Funds Requested: $143,256. Total Project Cost: $191,008. To construct a 720 watt FM radio station on 88.1MHz to provide first service to the Appache Indians as well as the communities of Whiteriver Canyon, Day Seven Mile, Show Low, Pinetop and Lakeside will be served by the station and a series of five translators; additionally a satellite earth terminal is requested.

File No. 1592CTB, Community TV Project Inc., PO Box 2750, Globe, AZ 85501. Signed By: J. P. Graybeal, Chairman. Funds Requested: $7,500. Total Project Cost: $10,000. Project requests funds to replace existing obsolete translator on channel 67 which re-broadcasts the PBS signal of channel 8, KAET-TV, in Tempe; area of service is the Globe-Miami area.

File No. 1418PTN, Arizona Bd of Regents for Arizona State Univ., Arizona State Univ., Tempe, AZ 85281. Signed By: Jack G. Penick, VP Business Affairs. Funds Requested: $433,826. Total Project Cost: $578,435. For construction of a four-channel ITFS system to operate within Maricopa County, Arizona, to deliver instructional programs and courses, as well as services to municipal, professional groups, and industry.

File No. 1530CTB, San Carlos Apache Tribe, P.O. Box O, San Carlos, AZ 85550. Signed By: Ernest Cutter, Chairman. Funds Requested: $68,480. Total Project Cost: $86,480. Request is for production and remote equipment to locally produce programming to interface with the three commercial TV cable systems to be built by 1986.

File No. 1783CRB, Arizona State University, Tempe, AZ 85281. Signed By: Jack Penick, VP for Business Affairs. Funds Requested: $196,544. Total Project Cost: $281,344. Applicant proposes new radio service for greater Phoenix metropolitan area. Project will provide second service public radio featuring fine arts format. Main studio will be located on ASU Campus with transmitter on South Mountain.

File No. 1314PRB, Southwest Alternatives Institute Inc., PO Box 3355, Tucson, AZ 85722. Signed By: Joyce R.E. Hardin, Board Director. Funds Requested: $84,594. Total Project Cost: $84,594. To plan for a community based radio station which will provide greater community access and alternate programming to the city of Tucson.

File No. 1808CTB, Bd of Regents Navajo Comty Coll, Tsaile, AZ 86556. Signed By: Dean C. Jackson, President. Funds Requested: $59,064. Total Project Cost: $59,064. To plan for the establishment of the first public TV facility to serve to the Navajo reservation which include parts of New Mexico, Arizona, Colorado and Utah.

File No. 1698CTB, AZ Bd of Regents-Univ of Arizona, Tucson, AZ 85721. Signed By: Sherwood Carr, Contracting Officer. Funds Requested: $62,938. Total Project Cost: $87,918. Request will replace an old 100 watt translator with a new 1000 watt unit and change the output frequency from channel 71 to channel 27 in order to adequately cover this rapidly growing area.

File No. 1447PTN, Central Arizona College, Star Route 77, Winkelman, AZ 85272. Signed By: Mel A. Everingham, President. Funds Requested: $18,500. Total Project Cost: $18,500. To ascertain the telecommunications needs of residents of San Pedro and Gila River Valleys of Arizona, and to determine the feasibility of developing capabilities for feeding educational programming to local cable systems.

PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM
FY 1981 Applications

ARKANSAS

File No.*1835*CRB, Henderson State University, Arkadelphia, AR 71923. Signed By: Martin Garrison, President. Funds Requested: $57,951. Total Project Cost: $77,268. To extend the signal of FM radio station KSWH operating on 91.1 MHz in Arkadelphia, to provide first service to Clark, Hot Spring, Garland, Dallas, and Nevada counties.

File No.*1683*CRB, Cave City Schools, PO Box 125, Cave City, AR 72521. Signed By: Bobby R. Depoyster, Superintendent. Funds Requested: $55,000. Total Project Cost: $121,500. To assist in the activation of an FM radio station KZIG-FM operating on 89.9 MHz, which will provide first service to the Cave City area in NE Arkansas.

File No.*1574*CRB, Ozark Public Broacasting, Box 547, Eureka Springs, AR 72632. Signed By: Barry R. Weaver, Secretary - Treasurer Funds Requested: $130,619. &Total Project Cost: $130,619. To extend the signal of KESP-FM on 90.9 MHz in Eureka Springs through an increase in power and activation of a translater in Huntsville.

File No.*1668*CRB, Arkansas Broadcasting Fdn, 1501 Arch St, Little Rock, AR 72202. Signed By: Larry Rogers, Vice President. Funds Requested: $120,326. Total Project Cost: $160,435. To activate an FM radio station on 88.3 MHz to provide programming for women and minority audiences in the Little Rock area.

File No.*1400*CRB, Little Rock Public School Dist, 7701 Scott Hamilton Dr., Little Rock, AR 72209. Signed By: Paul W. Masem, Supt. of Schools Funds Requested: $93,500. Total Project Cost: $125,000. To extend the signal of noncommercial radio station KLRE-FM in Little Rock and provide for stereo capability at the higher power level of 41 kilowatts.

File No.*1513*CRB. Univ of Arkansas at Little Rock, 33rd and University, Little Rock, AR 72204. Signed By: James E. Martin, President. Funds Requested: $112,062. Total Project Cost: $149,416. To activate a noncommercial FM radio station on 88.3 MHz to serve an estimated 50,000 listeners in the Little Rock area.

CONNECTICUT

File No. 1496CTB, Univ. of Bridgeport TV Corp., Park & University Avenue, Bridgeport, CT 06602. Signed By: Henry J. Henaghan, Vice President. Funds Requested: $119,298. Total Project Cost: $285,872. To establish a cable access center that would be from a point of dissemination for Southwestern Connecticut and would provide production and post-production training and facilities.

File No. 1407CTB, Connecticut Educational Telecommunications Corp., 24 Summit St., Hartford, CT 06106. Signed By: Paul K. Taff, President. Funds Requested: $259,309. Total Project Cost: $349,800. To augment the local production capacity of public television stations in Bridgeport, New Haven and Norwich.

File No. 1579PTN, Community Renewal Team, 3580 Main Street, Hartford, CT 06120. Signed By: James G. Harris Jr., Executive Director. Funds Requested: $138,384. Total Project Cost: $138,384. To plan for a community access center programming via cable, serving Hartford and surrounding communities.

File No. 1664CTN, Connecticut Educ Telecomm Corp, 24 Summit Street, Hartford, CT 06106. Signed By: Paul K. Taff, President. Funds Requested: $348,900. Total Project Cost: $432,900. To activate a statewide ITFS system, as adjunct to Connecticut Educational Telecommunications Corp. and in conjuction with the Connecticut Regional Community College System that will provide instructional services.

File No. 1360CRB, Monroe Board of Education, 375 Monroe Turnpike, Monroe, CT 06468. Signed By: Peter Barile, Jr., Superintendent of Schools. Funds Requested: $188,610. Total Project Cost: $251,480. To extend and improve the facilities of WMNE-FM in Monroe, Connecticut.

File No. 1825PTN, City of New Britain, P.O. Box 512, New Britain, CT 06051. Signed By: William J. McNamara, Mayor. Funds Requested: $15,000. Total Project Cost: $20,000. To conduct comprehensive planning for a regional facility that will utilize cable public access channels in New Britain and four surrounding communities.

MISSISSIPPI

File No. 1851CRB, Holmes Junior College, Goodman, MS 39079. Signed By: M.R. Thorne, President. Funds Requested: $56,950. Total Project Cost: $130,950. To activate a new noncommercial FM radio station to serve the unserved residents of Goodman and central Mississippi.

File No. 1639CTN, Rust College, 1 Rust Avenue, Holly Springs, MS 38635. Signed By: W. A. McMillan, President. Funds Requested: $192476. Total Project Cost: $294,476. To establish a cable TV/Radio access center using the existing cable system in Holly Springs. Project will provide training in radio/TV for students at predominately minority colleges.

File No. 1501CRB, Jackson State University, 1325 J. R. Lynch St, Jackson, MS 39217. Signed By: John A. Peoples, President. Funds Requested: $33,275. Total Project Cost: $130,790. To plan for the expansion of station WJSU-FM in Jackson in order to serve the minority population of central Mississippi.

File No. 1512CRB, Mississippi Authority for ETV, PO Drawer 1101, Jackson, MS 39205. Signed By: Forrest L. Morris, Executive Director. Funds Requested: $1,286,447. Total Project Cost: $2,213,343. To activate an eight station public radio network to serve the needs of the citizens of the entire state of Mississippi. Network would provide first public radio service to over two million citizens of the State.

File No. 1503CRB, J.C. Maxwell Broadcasting Group, P.O. Box 22624, Jackson, MS 39205. Signed By: William C. Brent, Project Director. Funds Requested: $320,433. Total Project Cost: $427,245. To activate first minority-controlled radio station on 88.7 MHz. Station will be located on campus of Millsap College and will serve large unserved area in central Mississippi. Station will use NPR receive satellite dish as a program source.

NEW HAMPSHIRE

File No. 1782PTB, Montshire Museum of Science, 45 Lyme Road, Hanover, NH 03755. Signed By: Robert C. Chaffe, Director. Funds Requested: $24,830. Total Project Cost: $24,830. To plan for an interactive telecommunications system with local origination capabilities to serve the upper valley region of New Hampshire and Vermont.

NEVADA

File No. 1393CTB, Elko TV District, P.O. Box 456, Elko, NV 89801. Signed By: Anna Kirkendall, Secretary-Treasurer. Funds Requested: $73,350. Total Project Cost: $97,825. To activate a low power television station to serve the residents of the Elko area. The remotely controlled mini station will be part of the Nevada rural TV system.

File No. 1394CTB, White Pine TV District #1, PO Box704, Ely, NV 89301. Signed By: R.E. Swain, Chairman. Funds Requested: $63,750. Total Project Cost: $85,000. To activate a low power television station to serve the residents of Ely. The remotely controlled mini station will be part of the Nevada rural TV system.

File No. 1395CTB, City of Fallon, 55 West William Ave., FALLON, NV 89406. Signed By: Ben T. Bartlett, P.E. City Engineer. Funds Requested: $63,750. Total Project Cost: $85,000. To activate a low power television station to serve the residents of Fallon. The remotely controlled mini station will be part of the Nevada rural TV system.

File No. 1806CTB, Mineral TV District #1, PO Box 1485, Hawthorne, NV 89415. Signed By: Henry Valdez Jr, Chairman. Funds Requested: $24,375. Total Project Cost: $32,500. Request is for assistance to provide educational television to four communities in Mineral County, Nevada via translators.

File No. 1518CTB, Mineral TV District #1, PO Box #1485, Hawthorne, NV 89415. Signed By: Henry Valdez,Jr., Chairman. Funds Requested: $63,750. Total Project Cost: $85,000. To activate a low power television station to serve the residents of Hawthorn. The remotely controlled mini station will be part of the Nevada rural TV system.

File No. 1550CTB, North Lake Tahoe Community Foundation, P.O. BOX 6760, Incline Village, NV 89450. Signed By: Jay Jerrett, President. Funds Requested: $63,750. Total Project Cost: $85,000. To activate a low power television station to serve the residents of Incline Village and the Lake Tahoe Basin. The remotely controlled mini station will be part of the Nevada rural TV system.

File No. 1563CTN, Pershing County, PO Box 219, Lovelock, NV 89419. Signed By: Robert W. Souza, Chairman,County Comsn. Funds Requested: $63,750. Total Project Cost: $85,000. To activate a low power television station to serve the residents of Lovelock. The remotely controlled mini station will be part of the Nevada rural TV system.

File No. 1601CTB, Channel 5 Public Broadcasting, Univ. of Nevada-Reno, Reno, NV 89557. Signed By: Daniel J Tone, Executive Director. Funds Requested: $945,000. Total Project Cost: $1,260,000. To construct a medium powered VHF TV station to serve the city of Reno and its surrounding area. Facility proposed will operate on channel 5 at 5KW ERP with a transmission facility located on Red Peak and studios at the University of Nevada in Reno.

File No. 1736CRN, Rural Television System, University of Nevada-Reno, Reno, NV 89557. Signed By: Daniel J. Tone. Funds Requested: $158,625. Total Project Cost: $211,500. To purchase equipment to remotely control ten satellite-fed mini TV stations which are planned for the State of Nevada. Equipment consists of satellite monitoring equipment, two manually operated controllers and a computer, with accessing equipment.

File No. 1564CTB, Nye County, P.O. Box 569, Tonopah, NV 89049. Signed By: Roy Neighbors, Nye Co. Adminstrator. Funds Requested: $63,750. Total Project Cost: $85,000. To activate a low power television station to serve the residents of Tonopah, the remotely controlled mini station will be part of the Nevada rural TV system.

File No. 1726CTB, Humboldt County, Box 391, Winnemucca, NV 89445. Signed By: William MacDonald, District Attorney. Funds Requested: $72,750. Total Project Cost: $97,000. To activate a low power television station to serve the residents of Winnemucca. The remotely controlled mini station will be part of the Nevada rural TV system.

SOUTH CAROLINA

File No. 1687CRB, Extension Division, Univ. of South Carolina, P.O. Box 85131 USC, Columbia, SC 29208. Signed By: B. A. Daetwyler, Vice President. Funds Requested: $44,595. Total Project Cost: $67,461. To increase power of WUSC-FM from 10Kw to cover counties of Columbia and Richland with news, sports and current events and to use the station as a training ground.

File No. 1433CRB, South Carolina ETV Commission, P.O. Drawer L, Columbia, SC 292250. Signed By: Henry J. Cauthen, President & General Manager. Funds Requested: $75,000. Total Project Cost: $100,000. To extend radio service to the blind by purchasing 1600 additional subcarrier receivers statewide to be carried on: WEPR, WNSC, WJWJ, WRJA, WSCI, and WLTR.

File No. 1651CRB, Limestone College, 1115 College Drive, Gaffney, SC 29340. Signed By: Betsy S. Humphries, Dir of Alumni Affairs. Funds Requested: $108,917. Total Project Cost: $145,223. To construct a public FM radio station in Gaffrey to provide educational public service, news and entertainment, and religious programming.

STATEMENT OF THE OFFICE OF COMMUNICATIONS AND BROADCASTING, UNIVERSITY OF NEVADA-RENO

We would like to thank the subcommittee for giving us the opportunity to submit written testimony regarding the funding of the Public Telecommunications Facilities Program (PTFP) for the fiscal years 1981 and 1982. The testimony has been prepared by the Office of Communications and Broadcasting, University of Nevada-Reno. It is submitted in consideration of eleven interested parties with whom we have worked over the past year. They are:

1. Circle TV Booster Club Inc., Circle, Montana
2. Roundup TV Tax District, Roundup, Montana
3. City Of Fallon, Fallon, Nevada
4. Elko Television District, Elko, Nevada
5. Humbolt County, Nevada
6. Mineral Television District #1, Hawthorne Nevada
7. North Lake Tahoe Community Foundation, Incline Village, Nevada
8. Nye County, Tonopah, Nevada
9. Pershing County, Lovelock, Nevada
10. White Pine Television District #1, Ely, Nevada
11. Channel 5 Public Broadcasting Inc., Reno, Nevada

During this past year we have been extensively involved in a planning study funded by PTFP, to bring the first public telecommunications service to Reno, Nevada and to rural communities throughout Northern Nevada. The planning study culminated with the submission of grant applications to PTFP, from Reno, and from ten (10) rural communities in Northern Nevada and Montana.

The technical system proposed for the delivery of public telecommunications to the rural communities breaks new ground. For the first time since the inception of public broadcasting small isolated rural communities, will be able to own and operate a public broadcasting station.

We are deeply concerned that a rescission of PTFP funds this year and, concomitantly, the abolition of the program entirely, would halt the development of public telecommunications for rural and Western America at precisely the time the means of receiving the service has come within their economic grasp.

The most significant outcome of the planning study undertaken by our office was the design of a remotely controlled "mini-station" which will deliver public telecommunication services to rural America. The delivery system is inexpensive and allows each community to exert local control over programming. (See technical description-Appendex I).

The Public Broadcasting Service (PBS) which had reviewed and rejected previous proposals pertaining to rural delivery systems, unequivocally supported our proposal. The Distribution and Support Service Committee adopted a resolution saying in part:

> "The Committee particularly commends the innovative approach which enables community judgment to be exercised in the selection of programming without incurring undue operating expense in the local community."

On January 19, 1981 ten rural communities representing some 65,000 individuals pledged $218,725 of local funds as their PTFP match to be the first communities to benefit from the delivery system. We have undertaken to form a non-profit corporation, Rural Television Systems, to work with other rural communities in obtaining technical facilities to receive and rebroadcast public telecommunications programs directly from WESTAR; to operate these facilities by remote control; and to organize regional rural networks which would work toward full utilization of the public service capabilities of the communities, facilities.

The Public Telecommunications Facilities Program is essential to the continued development of public telecommunictions in Western and rural America.

For fifteen years efforts were underway to bring public television to rural Nevada and Montana particularly. Now a means exists to do it technically and economically. Next year we expect at least two dozen more rural communities to apply for PTFP funds to construct there own public broadcasting facilty.

We urge you to continue the Facilities Program at a level sufficient to nurture the development of public telecommunications for rural America and for cities such as Reno, Nevada which are presently without a locally owned and operated public broadcasting facility. As the technological revolution in mass communications grows, it becomes increasingly important for someone or something to personalize communications which will attend to local communities needs.

Congressional intent in establishing the Facilities Program was to deliver public broadcasting services "to as many citizens of the United States as possible." In the West that job is far from complete.

Appendix I

Technical Design
for a
Rural Television System

MINI-STATION TECHNICAL DESCRIPTION

The miniature television broadcast station (mini-station) referred to in this proposal consists of several major equipment components: a small aperture satellite receiving antenna; an environmentally controlled equipment housing; and a transmitting antenna tower. This combination of equipment will be placed within one or two miles of the community to be served and in-line with the present TV antennas. This preconstructed and tested mini-station will be easily serviced as it is not located on a mountaintop that requires special equipment to reach. The output power from the system is sufficient to place City Grade signals to distances of about 2.5 miles from the antenna. This City Grade signal will blanket most typical rural communities that the system was designed to be used for. As the system is satellite-fed and located close to the community, the picture quality will be generally superior in quality and reliability to other television signals being received by the community.

PHYSICAL DESCRIPTION

Satellite Antenna. The proposed satellite receiving antenna will be nominally 4.6 meters in diameter. This antenna size coupled with an appropriate LNA will give a very high quality picture at the satellite terminal. This facility will be engineered for each community location to provide an adequate carrier-to-noise level with several decibels of reserve carrier.

The satellite antenna will be in close proximity to the equipment environmental housing where the satellite receiving components will be located. The antenna will be mounted on a special 3-point mounting base that will be installed in most localities with a minimum of special equipment other than a telephone post hole auger which is generally available in the vicinity of most rural communities. The community itself will be responsible for the physical installation of the overall facility as directed by an on-site technical person representing Rural Television Systems (RTS).

Environmental Equipment Housing. The enclosure for the satellite antenna receiving equipment will also house the mini-station 100-watt UHF television transmitter and ancillary control equipment. The housing will be constructed of baked enamel aluminum panels for long-term durability. It will be insulated and provided with adequate heating and cooling components to provide a stable environment for other electronic components. The physical size of the housing will be nominally 7-feet in width, 10-feet in length, and 8-feet in height. It will be equipped with power distribution system and ground system. The enclosure will be equipped with four standard equipment racks for mounting the electronic equipment.

Transmitting Antenna and Tower. The mini-station facility will in most cases include a forty-foot self-supporting tower and a single parapanel antenna. The antenna type and tower height will vary with the physical characteristics of the community and the height above average terrain of the receiving/transmitting site.

ELECTRONIC DESCRIPTION

The electronic equipment contained within the environmental housing will consist of satellite receiving equipment, originating and control equipment, monitoring equipment, transmitting equipment, and automatic fault reporting equipment. The mini-station components are generally available off-the-shelf standard technology items assembled into an electronic system capable of providing the required service to the community. The system is professionally designed and will be manufactured as nearly identical facilities to reduce costs, provide better maintenance back-up support with spare components, and to provide better assembly workmanship and system documentation than could be accomplished by building similar facilities at each site. Thorough testing and acceptance of the completed facility can also be better accomplished before each system is shipped from the manufacturer.

Satellite Receiving Equipment. One frequency-agile remotely-tunable satellite receiver is provided in each mini-station. Future rack space and control equipment will be provided for installation of a second frequency-agile receiver. This second receiver will be used to receive closed-circuit telecommunications material. The second channel will be distributed by closed-circuit to specific locations in the community (meeting hall, schools, etc.).

A satellite control data receiver will also be connected to the satellite antenna. This receiver will be used to provide control signals for remote control of the mini-station.

Provisions for future frequency agile National Public Radio (NPR) receivers will be included in the design of the module. This will make it possible to upgrade the mini-station to include an FM transmitter at a later time.

Originating and Control Equipment. A microprocessor-based controller will provide the overall control of the mini-station. This controller will receive its input data from the satellite data receiver. Initially this control information will be received by dedicated telephone data lines until enough mini-stations are "on-line" and separated far enough geographically to warrant a satellite control data channel. At the point where it becomes economically feasible to provide satellite control signals, the mini-stations can be located in rural areas all over the United States.

The control data signal will use a standard ASCII format and involves the same characteristics and electronic technology as electronic teletype machines. The control equipment in the mini-station will recognize control alpha/numeric codes sent to it over the control data channel and will respond accordingly.

The control system will use a preset and take scheme to be able to accommodate a large number of control words during the relatively long PBS television program segments (25 minutes or longer in most cases). The control memory of the microprocessor will retain the control words and transition number addressed specifically to that mini-station for the next event. Upon receiving a proper "transition" control word, the microprocessor will switch to the next event. There will be at least five levels of transitions such that switching will occur differently for mini-stations that might be receiving PBS programming from different combinations of the PBS transponders. Using this preset and take scheme, in the event that all four transponders come to the end of a program or the beginning of the next segment at the same time, it will be possible to send all five transition codes within a fraction of a second.

All mini-stations will be receiving the same party-line data channel to minimize data transmission costs and to reduce system complexity. The data rate will be relatively low speed (30 characters/sec) and normal data checking parameters will be used to insure data accuracy.

Time signals will also be transmitted to provide a real time clock at each mini-station. This time information will be used to allow the microprocessor to display locally generated messages and station ID signals within the "station break" segment of time. The microprocessor will determine the amount of time remaining after the program segment is complete (after receiving the end-of-segment transition signal) and will display messages in the character generator memories based on the amount of time remaining and the number of pages of memory that have been programmed. If there are no messages to be displayed, it will display a permanently programmed station ID. Background music will automatically be provided during the character generator message segments. The character generator will always display the station ID for at least 15 seconds prior to the hour (or the half hour) if there is no ongoing satellite programming.

Character Generator. The character generator portion of the originating system will be divided into two segments--permanently programmed pages and remotely programmable pages. Initially there will be at least eight pages of memory. These "pages" can be assigned for regional or local programming.

Remote programming of the character generator will be accomplished by standard telephone dial-up circuits. In this manner the mini-station can be flexibly and inexpensively identified with a specific region as well as with the local community. For example, if the switching center is controlling thirty mini-stations located in a three- or four-state area, each state can still provide its own regional services to its own mini-stations by using standard telephone circuits rather than the dedicated control data circuit. Minimal equipment will be needed by a regional entity to generate a page or so of messages and then to call each mini-station in its area and transmit these messages to its memory. Also, use of standard telephone circuits permits duplex data operation such that the message can be checked at the originating point to assure correct data transmission.

The local pages will be programmed in a similar way. A small fixed terminal will be provided with the mini-station package. This terminal will be permanently located in the community and will interconnect with the mini-station by standard telephone circuits.

Emergency messages will be transmitted to the mini-station using a portable, hand-held terminal with an acoustic coupler. A terminal of this type would be provided to authorized persons such as the sheriff or fire chief, and any message generated by this portable terminal would be immediately displayed at the mini-station by means of a horizontal crawl over the ongoing programming. The message would appear for a prescribed period of time and then would be extinguished. Security words known only to authorized operating persons will be coded into the system to prevent improper use of the terminals.

Another advantage of using a standard telephone instrument to transmit the messages from remote terminals to the character generator programmable page memory is that outlying communities that are receiving their PBS programming from translators repeating a primary community mini-station can also participate. By providing additional fixed terminals or portable terminals to authorized people in these outlying communities, they, too, can communicate with their population as to community announcements or emergency messages.

As the character generator is a digital fixed output level device, no technical monitoring is deemed necessary during its use in local origination.

Video Tape and Time-Base Corrector. The video tape and time-base corrector will be used to receive and delay programming as well as to provide a method of originating pre-recorded tapes supplied by the local community. These tapes for the most part would be rented from tape libraries. The tape machine and time-base corrector would be permanently mounted in the mini-station and would not be removed for use in the community. The digital time-base corrector output level controls would be calibrated and fixed to prevent improper modulation of the transmitter. No technical monitoring at the mini-station site is deemed necessary during its use in local origination.

Monitoring Equipment. Each mini-station will be equipped with a color video monitor/receiver and waveform oscilloscope. The video/audio input to this monitor /receiver and waveform monitor will have push-button switch selection of the following signals (minimum):

Video and audio from satellite receiver one and two (future)
Video and audio from the video tape recorder and time-base corrector
Video from the character generator
Video and audio from the output of the remotely controlled switcher (transmitter input)

The receiver portion of the monitor/receiver will be used to monitor the transmitter output signal. The receiver will also be modified to provide a relative-type audio/video modulation monitor for maintenance purposes.

A simple oscilloscope will be provided for measuring video signal waveforms and for maintenance purposes. The oscilloscope and the video monitor/receiver will be permanently mounted into the equipment racks of the mini-station.

A control character readout will be provided for control signal monitoring. Storage in the control memory will allow retrieving the last 256 control character commands for troubleshooting purposes.

Transmission Equipment. The mini-station will be equipped with a locally modulated 100-watt UHF translator. This translator package is an FCC-type approved system. The translator selected for this application is already in general use at most of the communities involved in this cooperative project and has a good record of dependability and manufacturer support. As this translator is already in use in these communities, technical personnel are already available and experienced in the operation and maintenance of these devices. Also a supply of spare parts is available locally. The translator is all solid state with the exception of the final output tube.

Automatic Fault Reporting Equipment. Each mini-station will be equipped with automatic fault detection and reporting. Upon detection of a fault condition, an auto-dial telephone interface will call a fault reporting number at the central switching center and report the condition electronically. The operator on duty will determine the most appropriate action to correct the fault and will take the station off the air if appropriate. He will notify the designated community technical person.

The following conditions will be detected and automatically reported and the described action taken:

Loss of control data signal from switching center to mini-station.

Mini-station will continue to broadcast ongoing program until next half hour or hour program point is reached, then mini-station will display local ID for 15 seconds and automatically shut down.

Data errors detected in control signal.

Mini-station will automatically call switching center and request retransmission of control data.

Loss of satellite carrier signal.

Mini-station will display local ID until next half hour or hour program point is reached, then mini-station will automatically shut down unless carrier is reestablished.

Loss of incoming video.

Mini-station will display station ID until half hour or hour program point is reached. If satellite video has not reappeared, the mini-station will automatically shut down.

Loss of incoming audio.

Mini-station will continue to broadcast the video portion until the half hour or hour program point is reached. If satellite program audio does not reappear the mini-station will automatically shut down.

Loss of audio or video modulation of carrier.

Loss of either audio or video modulation of the translator carrier, or of the carrier itself, will automatically shut down the mini-station.

Loss of primary power.

Interruption of primary power will cause the mini-station to shut down automatically and remain off until reset by the central switching facility or locally. The control system and character generator memories will be maintained by standby battery.

Detection of smoke or high ambient temperature condition (air conditioner failure).

Detection of smoke will immediately shut down the system. Detection of high ambient temperature condition caused by air conditioning failure will be reported to the switching center, where appropriate corrective action can be effected.

Intrusion detected.

Detection of intrusion will be immediately reported to the central switching facility. By means of the telephone handset inside of the mini-station, it will be determined if the intrusion is by authorized personnel.

As stated, all fault detections described above are reported to the central switching facility, where there will always be someone on duty. If the mini-station automatically shuts down, it must be placed back in operation manually by the central switching technical personnel, or the local operator, after he is satisfied that the mini-station is ready to function again. This may also be accomplished by remote control.

Remote Monitoring by Central Switching Facility. It will be possible for the central switching facility to routinely interrogate all mini-stations operating under this system individually. This will be done using standard dial-up telephone circuits to each mini-station. As a minimum, it will be possible to determine that the mini-station is broadcasting and to monitor the mini-station's transmitted audio signal. By monitoring the audio, it will be possible to verify that the mini-station control and switching system are working properly and that the station is rebroadcasting the proper satellite transponder channel. This monitoring capability is in addition to the technical monitoring specifically accomplished each day in the local community to assure that the system is working properly.

STATEMENT OF RONALD P. ANDRADE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Senator WEICKER. Next, Mr. Ronald Andrade.

Mr. ANDRADE. I am Ronald Andrade, executive director of the National Congress of American Indians. I will summarize my statement.

The National Congress of American Indians is the largest and oldest of Indian organizations. We represent approximately 150 tribes with combined enrollment of those tribes of approximately 400,000 individuals. So our base and the people we represent are extensive. We cover approximately 9 percent of the Indians in the United States, including urban Indians or Indians off the reservation. We are very concerned about the planned rescissions in fiscal 1981 for the telecommunications facilities program. We feel their communications systems are very critical to our people, very necessary for our tribes and that is why we are very firmly opposed to the rescissions in fiscal year 1981.

We feel telecommunications has enormous potential for Indian tribes. There are many areas where people have programs beginning to develop in cultural heritage, keeping contact with tribal members, off reservation members, helping in job training programs. The authorization of the low powered television program has finally put these kinds of possibilities within the reach of the Nation of our people. In the entire 6 years of Federal funding for public telecommunications, prior to the date of the 1973 act, in the following 2 years, 21 out of 30 applications had been filed, together with an additional 9 promising significant service to native Americans.

Since the 1978 act not only financed but mandated planning, 16 of the 21 grants in fiscal year 1979 and 1980 were planning grants. The rescission of funding and termination of the program will leave most of these programs in the lurch. Of all the planning and all the development and all the promises made to the tribes, encouragement given to the tribes, to plan and begin to develop these areas, our people begin to operate, go out and coordinate with other Federal agencies, bringing other agencies into the planning of these programs and now this is being cut back.

Our concern is all other areas that are effectively given to the plan have been reduced in this fiscal year.

The other program in Washington provides funds, one is the EDA, Economic Development Administration, were totally eliminated from their planning. Very quickly, it shows we are in very bad straits to plan these projects out. One of the ideas given by the administration is that private sector funds could provide funds tribes might need to do the programing or set up the program. But the private sector funds are available to already established programs. They do not provide money to plan, they do not provide development cost moneys to the tribes. They give general support funds to the tribes or to other television stations so it is ridiculous.

We are being put in a very, in a catch-22 situation that we can't get the private sector funds unless we already have an operating program. This administration is saying go get the funds to set up an operative program. It won't work. Somewhere in between we are going to be eliminated in this.

We are very concerned that the tribes have this opportunity. Most of our areas are not what we consider high areas. They are not considered lucrative areas for intelligence markets. These markets are designed for tribal needs to meet the needs of the local people.

For that reason we feel it is very critical this rescission is taking place. We request that the rescission not be done, the $25 million be restored in this fiscal year and that the program be continued into the 1982 year so that our people would finally have a chance to totally plan and establish their programs as they had hoped to. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF RONALD P. ANDRADE

Founded in 1944, the National Congress of American Indians (NCAI) is the largest national Indian organization, representing 150 Tribes and 3,000 individual members. While NCAI is primarily concerned with protecting the interests of Indian Nations, it is also concerned with Indians who have become separated from their tribal communities, and is dedicated to increasing public understanding of Indian people and the conditions in which they live. With this diverse and scattered constituency and with these goals, NCAI is especially sensitive to the importance of communications. NCAI is therefore firmly opposed to any rescission in fiscal year 81 funding for the Public Telecommunications Facilities Program and supports reauthorization of the program.

Before Indian Nations were confined to reservations, Indians traveled widely and came into frequent contact with other Indians who spoke different languages and often had very different customs and traditions. Sophisticated means of overcoming these barriers were developed: signs, symbols, trade languages, and other conventions. Each Nation's culture was vitalized and reaffirmed by contacts with others.

By restricting Nations to reservations in isolated areas, the federal government severely limited intertribal communications. (In boarding schools, where children did come into contact with children of other Nations, all aspects of Indian identity were suppressed as the children were taught to be like whites.) The reservations remained islands surrounded by a culture that was and is numerically and technologically awesome. In the 1950's, the federal government instituted a policy of tribal termination coupled with accelerated cultural 'assimilation'. Indians were encouraged to leave the reservation and move to cities where they would learn skilled trades and their tribal identity would dissolve in the urban melting pot. However, urban Indians discovered that despite tribal differences, there was much that they shared as Indians and much to learn from each other.

In the early 70's the federal government reversed its policies of termination and assimilation in favor of tribal self-determination. While new respect was given to the integrity of Indian Nations, many urban Indians had, in effect, been cut off from their reservation homes: they had formed family ties in the cities, and, while unemployment was high, it was much less than on the reservation. Political tensions between reservation and off-reservation Indians which arose with migration to the cities took on a new twist, and, with the increasing high cost of transportation, Indian Nations have found themselves in many ways more fragmented and isolated than ever.

In this respect, telecommunications can play a vital role in alleviating the problems created by this fragmentation and isolation. Commercial television has simply not addressed the communication needs of Indian Nations. To the contrary, it has contributed to even greater fragmentation and isolation by ignoring or often times misrepresenting Indian issues, culture, and tradition. Public television, even though it has been more responsive to the needs of Indian people, is generally unavailable to reservation populations.

Public telecommunications can be used to conserve and perpetuate the insight and wisdom of Indian people and the traditions that have kept the Nations together in all manner of economic and political circumstances.

Telecommunications has enormous potential for helping Indian Nations to develop. For example, television can be used to:

- Provide educational and job training programs;
- Provide programming on preventative medicine, first aid, mental health, alcohol and drug abuse, coping skills, etc.;
- Increase awareness of and participation in tribal planning and decision making;
- Preserve cultural heritage;
- Maintain contact with off-reservation members;
- Exchange information on economic and social programs with other Nations; and
- Teleconference with other Indian Nations or urban Indian organizations.

The authorization of low power television by the FCC has for the first time put television within the reach of possibilities for Indian Nations. Satellite interconnection will make it possible to share programming and information far more efficiently than has been possible until now.

The Public Telecommunications Act of 1978, by requiring priority for areas of first service and special consideration for miniorties and for the first time, authorizing planning grants, promised a world of new opportunity for Indian telecommunications. In the entire of 16 years of federal funding for public telecommunications prior to the affective date of the 1978 Act, only three applications by Indian groups were funded. In the following two years (FY 79 and 80), 21 out of 30 applications have been filed together with an additional 9 promising significant service to Native Americans. This large increase is in large part due to the efforts of the Public Telecommunications Program staff in accordance with directions in the statute to inform Indians of opportunities for telecommunications development and assistance available under the program.

Since the 1978 Act not only financed but mandated planning, 16 of the 21 grants to Indian projects in FY 1979 and 1980 were planning grants. Rescission of funding and termination of the program will leave 14 of these projects in the lurch -- without the 75% federal funding on which the planning was promised. For the past 5 years, the Bureau of Indian Affairs and the Administration for Native Americans have also encouraged Indian Nations to engage in careful, coordinated planning. Indians have been encouraged to invest time and resources on the premise that proper planning would ensure that funds would be well invested. When the Office of Management and Budget suggested sharp foreign aid cuts in January, it was quickly pointed out that we had undertaken commitments which we could not go back on. It troubles us that the federal government should be less consistent toward its own people, and toward dependent nations, than toward foreign nations.

This administration, like the previous administration, has endorsed self-determination and economic self-sufficiency for Indian Nations. But self-determination and economic self-sufficiency do not come easy, particularly for people who a mere 15 years ago were subject to campaign to eradicate the structures and traditions of self-government. Unless Indian Nations have the tools necessary to function effectively in an economy based increasingly on the efficient flow of information, these goals are unrealistic, and failure to achieve them will lead again to recriminations and ill-feeling between Indian Nations and the federal government.

Senator WEICKER. I want to thank all of you for your testimony.

Let me say this, I think the reaction I have, I sit here and watch television, at least the commercial television, what a waste, what a terrible waste. Then I have to ask myself one of the questions I was going back and forth on with Senator Ervin, what do I do about it? I certainly don't want to go ahead and dictate taste. It seems to me what you can do is hopefully rely on competition to go ahead and produce a better quality of television.

In that sense I think most quality is represented by those of you here and those who seek that quality that you also represent.

That is the way the matter is taken care of without anybody trying to censor or dictate what the standards should be. So I can tell you right now, at least speaking for the chairman, I feel very strongly committed to the concept of public television and what it can achieve in terms of quality programing, in terms of education, in terms of, in other words of avoiding the criticism, after seeing what is on the tube now, it is a waste. It is a waste of tremendous resource we have in this country. I don't think your job is altered regardless of whether different technologies are coming on stream or not. The fact, it is an enormous tool for education of our populus, old and young alike. We need those tools.

I, for one, will not be voting for the rescission in this area. So let's keep our fingers crossed and hope something constructive can come out of it. In any event, I also know without you speaking up here today, without others speaking up as to the value of the program, programs that have value, these things would roll right through. I want to thank you very much for being here.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATEMENT OF E. ARTHUR TRABANT, PRESIDENT, UNIVERSITY OF DELAWARE, ON BEHALF OF NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES

Senator WEICKER. Our second panel will be discussing the National Oceanic and Atmospheric Administration programs. We have E. Arthur Trabant, president, University of Delaware, on behalf of the National Association of State Universities and Land-Grant Colleges; Donald Rosenberg, president of the Sea Grant Association; Gustave Fritschie, Director of Government Relations, National Fisheries Institute. Glad to have you all here. I don't mind telling you, you don't have to give me any speech on this whole matter. I wish I could spread you out, send you down to the White House, up to the Budget Committee, a few other places. Your words are needed. I am delighted you are here. I don't mind telling you, I really think these programs impact on everybody else. As most of you gentlemen know, in conjunction with Fritz Hollings, we have for the past 4 or 5 years tried to put together an oceans program both in terms of the agency, its personnel, its directions, sea grant, et cetera, that this Nation would be proud of and also to put this Nation in the forefront of the oceans knowledge. That was carefully crafted. Wasn't money thrown out without knowing where it was going. Personnel wise, it is no bigger today than it was 10 years ago. That is in large to sea grant, and I am really proud of it.

All of a sudden some fellow there at OMB—he hasn't been swimming much less anything much further than that—just knocks it out. So I want you to know I see 4 or 5 years of my work just blown out, excuse the pun, blown out of the water, without any attention being paid to substance in the course of that action.

So I wish you well in your articulation of your cause. I am delighted to get your statements here on the record. I also want you to know I am going to do everything I can, every single procedural step, resolutions, to piece this oceans program back together.

I had a long talk already with the Secretary of Commerce subsequent to the public hearing which some people characterize as my being a little testy. We had a lengthy talk with the Secretary of Commerce. I think as far as sea grants is concerned, I expect to see movement in that area on the positive side and maybe some of these other programs. The floor is yours.

Please proceed anyway you want.

Mr. TRABANT. Senator, we know of your support and interest. Of course, our hope would be that you would be as positive when we are through as you are when we start with the testimony.

As you said, my name is E. Arthur Trabant, president of the University of Delaware. I also serve as the chairman of the Marine Affairs Committee of the National Association of State Universities and Land-Grant Colleges. And it is in that capacity I am here today for that institution and its affiliated institutions to testify on the national sea grant program.

As you know, the National Sea Grant College program was reauthorized in 1966 and then it was reauthorized in 1976. It is a handsome piece of legislation. I quote from the original act: "Should benefit the United States and ultimately the people of the world, by providing greater economic opportunities including expanded employment and commerce * * *"

The question I address is the following, Why should there be public support in the college sea grant program. I have four answers. Answer No. 1, the Federal Government does have jurisdiction over 98 percent of this country's marine resources. Now it is true that the State's control of subaqueous lands 3 miles offshore and inrivers and estuaries, but it is nevertheless true, marine fisheries controls, pollution regulation, those are all responsibilities of the Federal Government.

Then when we look ahead to the forthcoming ratification of the 200 mile offshore economic zone, we as a nation will increase the area over which we have narrowly absolutely coventry, to a figure from 50 to 100 percent. A popular figure is 53 percent. We do have a national contingency plan with oil spills but there existed no comprehensive legal, technological, economic base for dealing with spills in a manner acceptable to all concerned. But sea grant has been able to step in and provide the impetus for research partnership, a beautiful example of the sea grant program, with the U.S. Navy, U.S. Coast Guard, a spill control equipment manufacturer, an oil company, agencies of State government and a charitable foundation to develop means to deal with oil spills. That is a prime example of its partnership with the sea grant program.

Answer No. 2, the sea grant program produces technology of national interest first and then second of interest to the State and local areas. Examples, commercial aquaculture technology, development of marine biomedicinals, and research in the area of recreational and sport fishing. I think one would be hard put for an example to say the University of Michigan sea grant-developed cold water lifesaving technique is of value only to Michigan residents. This technique has reversed conventional medical wisdom in regard to cold water drowning and has made it possible to save lives which in the past would have been presumed lost.

In the State of Delaware, for example, our program of sea grant research has produced controlled environmental mariculture technology which is used in Massachusetts, Hawaii, and France.

Similarly the Delaware program for salt tolerant plants is useful in all States that have high marshes as well as in States with arid lands, which have chloride build-up in irrigated soil.

There is a report on the economic effects of sea grant—a sea grant task force did this and documented it—that there are well over $200 million a year in annual revenues and savings to Government and private sector which result from the sea grant program. When one considers to date a total of $270 million have been invested, we get back in a year almost a total investment in the sea grant program.

Answer No. 4, the sea grant program was never intended as a capacity building program with Federal contributions only in the initial stages of the development rather than on an ongoing basis. That was its main reason for existence. The parallel implied in the title "Sea Grant" links the program to the "Land Grant" concept which has been the major force in agricultural teaching, research, and service since the last century.

I met recently with the Deputy Secretary of Commerce, Mr. Joseph R. Wright, to explain the uniqueness of this partnership under the sea grant. I sent him two letters. They are part of my testimony. The first one, the main point is the suggestion that the Department of Commerce look at what has been accomplished under the land grant philosophy in the Department of Agriculture and suggested that a similar interpretation and translation in the Department of Commerce using the sea grant method and the State University Land Grant Institution, we can do a great deal in a positive nature in the Department of Commerce.

A second letter was at his request, Mr. Wright's request, and he asked me to outline the six current most important, past and current, sea grant programs and future most important sea grant programs. I did send it. It is part of my written statement. Sea grant has become a type of partnership, universities, industries, local and State government that was intended to be in the original legislation. The benefits of the partnership have been well documented. Publications from all kinds of organizations, the Heritage Foundation, the sea grant task force and even the recent quarterly support of the Exxon Corp.

And if these benefits are to continue, we do need a vigorous Federal contribution. So on behalf, then, sir, of the land grant, Sea Grant Institution making up the National Association of State Universities and Land Grant Colleges, I do urge, I urge very strongly your continued positive review and continued support of the National Sea Grant College program.

I am not here alone. You see two colleagues beside me and we have other colleagues behind us.

[The statement follows:]

STATEMENT OF E. ARTHUR TRABANT

Mr. Chairman, my name is E. Arthur Trabant, and I am President of the University of Delaware, both a Land Grant and Sea Grant University. I am also Chairman of the Marine Affairs Committee of the National Association of State Universities and Land-Grant Colleges. Today I testify on behalf of the Association and its constituent institutions with regard to the National Sea Grant College Program.

This program was established in 1966 under the National Sea Grant College Program Act and was reauthorized in 1976. The legislative intent and history of Sea Grant outlined a program of cooperative marine activities that would:

> "benefit the United States and ultimately the people of the world, by providing greater economic opportunities including expanded employment and commerce..."

The intent of this ongoing national commitment has not been fully appreciated by the Reagan administration. In testimony before this committee on March 27, 1981, the acting NOAA administrator implied that the 16 Sea Grant colleges and some 30 other academic and research institutions were simply addressing local, state, and regional needs. Based on this acutely limited assessment of Sea Grant's impact, the administration has abruptly concluded that support for Sea Grant should come from the states, localities, and industry. The central point of debate therefore is: Why should there be federal support for Sea Grant? Ideally, optimal investment of federal dollars is in a program of substantial national impact, particularly when the program demands long-term investment of the sort for which availability of private sector capital is limited, and where there exists enormous potential for return on the investment. Analysis of Sea Grant reveals a program which meets all of these criteria, as my testimony will indicate.

It must be recognized that the Federal Government has jurisdiction over 98 percent of this country's marine resources. Although states do control subaqueous lands three miles offshore and in rivers and estuaries, it is nevertheless true that navigation control, marine fisheries management and pollution regulation are all responsibilities of the Federal Government. Furthermore, with the forthcoming ratification of the 200-mile offshore economic zone, the United States will increase the area over which it exercises nearly sovereign control by 53 percent.

For these reasons, and because estuarine and oceanic circulation pays no heed to state boundaries, states are usually reluctant to appropriate funds for studies outside state boundaries, even though a state's problems may originate in a federally controlled dump site or in another state's waters. This is the underlying reason why Sea Grant work in such areas as coastal waste water treatment technology, fisheries development, and oil spill modelling and technology, has been indispensable.

In the case of oil spills, despite the existence of a national contingency plan, there has existed no comprehensive legal, technological, and economic basis for dealing with spills in a manner acceptable to all concerned groups. Problems of credibility could undermine whatever capacities government agencies, the oil companies, or other components of the private sector might have if any of these entities unilaterally attempts to carry out or sponsor the needed research. Sea Grant has been able to step in and provide the impetus for a research partnership by the U. S. Navy, the U. S. Coast Guard, a spill control equipment manufacturer, an oil company, agencies of state government and a charitable foundation, to develop means to deal with oil spills. This is a prime example of the tripartite partnership of the Federal Government, universities, and the private sector, to address a problem which could only be successfully addressed through such collaborative effort.

I have mentioned some examples in which jurisdictional considerations have mandated the Sea Grant partnership. I now wish to turn to the assertion that Sea Grant produces technology of exclusively state and local interest. The refutation of this claim lies not only in the examples of program areas previously mentioned, but also in such areas as commercial aquaculture technology, development of marine biomedicinals, and research in the area of recreational and sport fishing. One would be hard put to prove, for example, that the University of Michigan's Sea Grant-developed cold water lifesaving technique is of value only to Michigan residents. This technique has reversed conventional medical wisdom in regard to cold water drowning and has made it possible to save lives which in the past would have been presumed lost. Although there may be some Sea Grant research directed to peculiarly local problems, relatively few programs yield such limited results. In the State of Delaware for example, Sea Grant research has produced controlled environment mariculture technology which has been put to use in Massachusetts, Hawaii, and France. Similarly, Delaware Sea Grant research on salt-tolerant plants is useful in all states with tidal marshes as well as the arid lands in the western United States which have chloride build-up in irrigated soil.

These are only a few of the many examples which I could cite. The economic significance of Sea Grant research programs throughout the nation has been recently documented. In a report, "Economic Effects of Sea Grant," a Sea Grant Task Force documented well over $200 million in annual revenues and savings to government and the private sector resulting from Sea Grant research. This amount is significant when one considers that the federal investment since the inception of Sea Grant has totalled only $270 million. Clearly, Sea Grant is the most cost-effective marine resource program in the nation.

There is one final misconception regarding the intent of the Sea Grant legislation which has been voiced by the Reagan administration: that is that Sea Grant was intended as a capacity-building program with federal contributions only in the initial stages of development, rather than on an ongoing basis. The parallel implied in the title "Sea Grant," which links the program to the "Land Grant" concept which has been the major force in agricultural teaching, research, and service since the last century, certainly argues to the contrary.

It is not necessary for us to attempt to second-guess the intent of Congress in enacting and later reauthorizing the National Sea Grant College Program. The portion of the authorizing legislation which I quoted at the beginning of my testimony specifically mandates a program to "benefit the United States and ultimately the people of the world." Furthermore, we can look directly to the testimony of a member of Congress who has worked closely with the Sea Grant program from its very beginning. In a statement introduced into the Congressional Record on March 10, 1981, Senator Claiborne Pell said, "...I know the intent of the Congress was and is that the program be a continued partnership between the Federal Government and State and local interests with each paying a share of the costs."

In order to represent the commitment of NASULGC and the Sea Grant Colleges and Institutions to the partnership concept embodied in Sea Grant, I met with Deputy Secretary of Commerce Joseph R. Wright on

March 24 to initiate discussions regarding the future of Sea Grant. For the record, I am including with my testimony letters which I sent to Mr. Wright subsequent to that meeting, which outline the productive interchange that can take place between Sea Grant constituents and the Department of Commerce. In addition, at Mr. Wright's request, I outlined the six past and current Sea Grant activities which have been of greatest national significance, and the six future activities in which Sea Grant can have its greatest impact.

In the years since its inception, Sea Grant has become just the type of partnership of universities, industry, and local and state governments that was intended in the original legislation. The Federal Government is the basic thread linking these components into a nationwide network. The benefits of this partnership have been well documented in this and other testimony, as well as in publications from such diverse groups as the Heritage Foundation, the Sea Grant Task Force, and even the recent quarterly report of the Exxon Corporation. If these benefits are to continue, however, a vigorous federal contribution will be essential. The common property nature of most marine resources, and the structure of marine-related industries demand leadership and investment by the Federal Government in long-term research to assure the wise use, development and conservation of these resources. On behalf of the Land and Sea Grant institutions making up the National Association of State Universities and Land-Grant Colleges, I strongly urge your positive review and continued support of the National Sea Grant College Program. I now stand ready to respond to any questions you may have.

March 26, 1981

The Honorable Joseph Wright, Jr.
Deputy Secretary of Commerce
Department of Commerce
14th and Constitution Avenue, N. W.
Washington, D.C. 20230

Dear Mr. Wright:

It was an honor and a pleasure for President Davison and me to have the opportunity to talk with you and Ms. Martha Hesse about the Sea Grant Program and other topics of importance to the productivity and general economic health of our country.

Shortly, we will be sending you the list of significant Sea Grant projects which we believe have had special importance in the national arena over the past few years. As requested, we will also send you a list of projects which we believe have great potential for the future.

I take this opportunity to say again that both Fred Davison and I came in the spirit of cooperation in offering our help to you, Secretary Baldridge and your Department. We earnestly believe that the Sea Grant Program is one of the most effective cooperative endeavors between the Federal Government, Sea Grant/Land-Grant Universities, states, business and industry, and, therefore, we ask that you consider the possibility of forming a group comprised of persons from our universities or any other Land-Grant Universities to work with you, Secretary Baldridge, and your colleagues. Such a group would examine the strengths and possible weaknesses of the Sea Grant Program —how it might more effectively serve the goals of your Department (in particular goals number 3 and 4 contained in the March 4, 1913 Act authorizing the Department of Commerce) and the national administration. Another topic that this group might well consider is how the Sea Grant Program could serve as a model for the more effective achievement of the goals of the Department of Commerce as noted above.

As I said in our conversation, it is my personal view that the Department of Commerce, during my lifetime, has never fully activated positive programs for the achievement of these goals and hopefully there is an opportunity to do so at this particular time. Fred, I, and others would certainly welcome the opportunity to explore and discuss this matter further with you.

Shortly, Fred and I will be contacting you with some suggested schedules and plans for a visit affording a "hands-on" experience with Sea Grant work at the University of Delaware, primarily its Lewes facility, and at the University of Georgia, primarily its program at Skidaway and Sapelo Islands.

Again, thank you for the opportunity to talk with you and Ms. Hesse. I look forward with positive expectation to possible future meetings on this subject.

Sincerely,

E. A. Trabant
President

April 10, 1981

The Honorable Joseph R. Wright, Jr.
Deputy Secretary of Commerce
Department of Commerce
14th and Constitution Avenue, N. W.
Washington, D. C. 20230

Dear Mr. Wright:

As discussed at our March 24 meeting and in my letter to you of March 26, I am enclosing examples of current and future Sea Grant activity of considerable national significance (with a more detailed assessment attached). In identifying these examples, I have been particularly mindful of the legislative intent and history of the Sea Grant Act, which outlined a program of cooperative marine activities that would:

> "benefit the United States and ultimately the people of the world, by providing greater economic opportunities, including expanded employment and commerce...".

As you know, the National Sea Grant Program is the only comprehensive research and development partnership forged among government, industry, and the universities designed for the optimal development of ocean resources.

I take this opportunity to suggest and strongly advocate that, as we look toward the future of the U. S. marine sector and the role of the Department of Commerce, it might be mutually productive to establish a forum for university administrators, Sea Grant personnel, and interested members of Congress to meet under your leadership with others from the Department of Commerce and N.O.A.A. to identify the priorities that will maintain and intensify activities directed towards the aims and objectives of the Department. In this way, for instance, the Sea Grant program, as part of the government/university relationship, could be shaped to provide additional national benefits and to optimally assist in the President's Economic Recovery Program.

Realizing that Secretary Baldridge will be putting forward his budget estimates for FY 83 to The Office of Mangement and Budget in June, I consider this program reform effort to be of top prioity, and can assure you that the National Association of State Universities and Land-Grant Colleges and the Sea Grant Association stand ready and willing to assist in all manners possible. It is my belief that a thorough examination of legislative, budgetary and administrative procedures associated with Sea Grant and other N.O.A.A./university activities can be of immense value to your Department and to the well-being of the Nation.

Finally, as I indicated in my March 26 letter, President Fred Davison of the University of Georgia and I will be contacting you shortly to discuss further the possibility of visits to the Sea Grant facilities in Delaware and Georgia.

Sincerely,

E. A. Trabant
President, University of Delaware
Chairman, Marine Affairs Committee, NASULGC

SEA GRANT ACTIVITIES OF NATIONAL SIGNIFICANCE*

I Current Sea Grant Activities of National Significance

(a) Commercial Aquaculture

(b) Coastal Waste Water Treatment Technology

(c) Oil Spill Modelling and Technology

(d) Fisheries Technology Development

(e) Research and Education to Support Recreational/Sport Fishing

(f) Cold Water Lifesaving Technique

I Sea Grant Activities of Significance in the Future

(a) Aquaculture and Fish for Export

(b) Assimilative Capacity of the Oceans

(c) Salt Tolerant Plants

(d) Marine Technology Development

(e) Marine Biomedicinals and Natural Products

(f) Deepwater Ports

*Not listed in order of priority.

I. CURRENT SEA GRANT ACTIVITIES OF NATIONAL SIGNIFICANCE

(a) Commercial Aquaculture

The 1966 Sea Grant Legislation specifically identified aquaculture as an area for research, education training and advisory services within the program. In 1981 the Sea Grant Programs nation-wide devoted over $6.9 million to aquaculture and directly served over 31,000 individuals in the aquaculture community.

Sea Grant aquaculture research encompasses a wide variety of organisms ranging from marine algae and seaweeds through freshwater crawfish and prawns to abalone and mussels. Major thrusts have been in salmon ocean ranching, lobster and shrimp pond-farming and several species of shellfish.

Research continues to be directed toward technological problems which contribute to commercial development, including genetic studies to improve yields, development of improved methodologies for stock-propagation, development of diagnoses and treatments of diseases found in closed-culture systems, technology to increase overall plant productivities, and education and training of personnel.

(b) Coastal Waste Water Treatment Technology

The difficulties associated with waste water disposal has had a profound negative impact on economic development in the coastal regions. The development of low-cost, effective septic systems that work in coastal regions, often characterized by marsh lands, high water tables, and/or poor percolation characteristics, is a priority area for research, and advisory activities.

An example of accomplishment is research in the Carolinas on environmental distribution of sewage waste and the development of alternative cost-effective disposal systems which have been approved and adopted by coastal communities.

(c) Oil Spill Modelling and Technology

Oil spill clean-up is an issue of concern to several government agencies, to oil companies, to manufacturers of oil spill clean-up equipment, and to coastal citizens. Although a national contingency plan exists, there is no overall legal, technical and economic analysis of the problems involved in cleaning up oil spills to fill a need acknowledged by all concerned groups. Problems of credibility make it difficult for government agencies, oil companies, and manufacturers of clean-up equipment to unilaterally carry out, or sponsor the required research. Conflicts of interest, prohibitive costs and accusations of bias can be expected, regardless of the quality of the results.

This research will contribute to improving control of oil spills in the most economical manner possible. Furthermore, since many of the interested parties will have worked together on gathering information and data for an analytical computer model which is being developed, the integrity or bias of the research results is not likely to be challenged. The important technical contributions and practical experience offered by industry representatives and representatives of government agencies assure that the research results are practical.

The research by Sea Grant is currently being supported by the U.S. Navy, the U.S. Coast Guard, the Spill Control Association of America, a manufacturer of oil spill clean-up equipment, an oil company, agencies of State Government, and a charitable foundation. This is a prime example of the tripartite partnership of the Federal Government, universities, and the private sector. A problem of such economic and social consequence, and one which is clearly a shared concern of all sectors probably only can be addressed by a collaborative effort.

(d) Fisheries Technology Development

Research and education programs within Sea Grant have historically been a strong component of the Program. In 1981, the Sea Grant Programs nationwide allocated $5.8 million to commercial fish harvesting research and education programs, serving over 95,000 individuals.

Sea Grant fisheries technology development activities range from research on specific technology issues to training individual fishermen in new practices which enhance harvests or increase productivity.

Research currently underway is directed towards (1) developing fishing vessel gear technology, (2) improving energy efficiency in vessel operations, (3) improving stability of vessels, (4) developing automated harvesting and shipboard processing techniques to increase processing efficiency, and improve product quality, and (5) developing more versatile gear for multi-species fisheries, and for four-season fishing.

Sixteen projects recently analyzed in the fish harvesting section each provided an average annual effect of over $2 million.

(e) Research and Education to Support Recreational/Sport Fishing Industry

The significant role that recreational/sport fishing plays in the U.S. economy has been increasingly recognized in recent years. The number of marine sports fishermen has been growing at a rate of about 10% per year during the past two decades, with annual expenditure increasing 11% per year. In 1978, there were about 10 million marine sports fishermen, expending over $2 billion annually.

The Sea Grant Program recently has placed increased emphasis in this area by:

(1) Conducting research on charter boat operations to offer techniques to increase profits or to reduce business costs.

(2) Assisting small businesses with the specialized knowledge on taxes, regulations, and business strategies to improve business operations.

(3) Working with government agencies to improve public access to marine sport fishing areas.

(4) Developing, with industry, floating tire breakwater technology to assist marinas in offering cost-effective vessel and harbor protection.

(f) Cold Water Lifesaving Technique (Solely Sea Grant Sponsored)

Research at the University of Michigan enabled Dr. Martin Nemiroff to pioneer a cold water lifesaving technique that reversed conventional medical wisdom in regard to cold water drownings. The old adage of four minute oxygen deprivation being critical and resulting in death of the patient was cast aside. The Sea Grant/Nemiroff results were disseminated both nationally and internationally to hospitals, lifesaving organizations, and to paramedics.

II SEA GRANT ACTIVITIES OF SIGNIFICANCE IN THE FUTURE

(a) Aquaculture and Fish for Export

Sea Grant has advanced aquaculture technology rapidly during the past decade. Work on several economically important species of finfish, shellfish and crustaceans can be expected to accelerate during the coming decade with new commercial enterprises emerging more regularly.

As fishery management out to the 200 mile economic zone attracts more U.S. investment in floating and onshore facilities, Sea Grant research and advisory service will play an increasingly important role. This will be a fast-moving business environment. Sea Grant marine advisory agents are now active in helping bring the latest foreign and domestic fishing technology to both small and large fishing vessel operators as well as processors and marketers.

(b) Assimilative Capacity of the Oceans

The nation's population is concentrated on the ocean coast, along estuaries and along rivers which feed into the oceans. Water for potable and process use is becoming increasingly scarce and costly. As coastal aquifers are depleted to serve an expanding population, salt water intrudes. This situation is compounded by the problem of disposing of domestic and industrial wastes. Sea Grant research can be expected to contribute to the solution or alleviation of several important facets of these problems. Of particular value will be increased knowledge of the effects of these wastes, particularly toxic wastes, on marine plants and animals. With this information in hand, it will be possible to estimate the ability of the ocean and coastal waters to assimilate the wastes of mankind. Better yet, it should be possible to distribute wastes with nutritive value so that they enhance the productivity of the oceans and coastal waters. Sea Grant research can be expected to contribute substantially to the solution of this perplexing set of problems.

(c) Salt Tolerant Plants

Another method of adjusting to the decreasing supply of fresh water and the increasing supply of salt water is to either (a) breed widely accepted food plants (e.g. wheat, barley, tomatoes) so that they possess greater salt tolerance or (b) identify and domesticate plants which naturally grow in salt water and use their seeds and fibers. Sea Grant research is now pursuing both options. While plant breeding and genetic manipulation are time-consuming, results of considerable economic significance can be expected during the coming decade.

(d) Marine Technology Development

The Sea Grant Program is the only national, across-the-board, effort to encourage commercial innovation for marine resource development. The basic laws of physics, chemistry, and biology are being employed as the building blocks for a wide range of useful inventions. Patent activity as a result of Sea Grant research is accelerating. Two examples are technologies developed for offshore construction and material disposal, and fermentation techniques for producing ethanol in seawater. More industries are being licensed to move these inventions through the development stage to commercialization. This is always a long process, however, Sea Grant research from the past decade will pay increasing dividends in the coming decade.

(e) Marine Biomedicinals and Natural Products

The world is on the verge of a revolution in the application of biology and chemistry to a wide range of important problems. The Sea Grant Program has made substantial strides during the past decade. Progress can be expected to accelerate during the coming decade. One substance, chitin, a waste product from the exoskeletons of crustacea is useful for many applications and is near commercial scale-up for several of these.

The university-based Sea Grant Program is the natural organization to join with industry to discover and accelerate to commercial use a wide range of marine biochemical products. A substantial number of university-industry joint efforts can be cited and more will develop in the decade ahead. The Federal Government, as the regulator and enforcer, cannot aspire to be as effective in developing close-working relationships with industry.

(f) Ports and Harbor Development

The United States has lagged seriously behind other industrial nations of the world in developing deep draft ocean ports to accommodate bulk cargo ships. As a result, United States manufacturing firms are at a competitive disadvantage because they must pay more for bulk commodities brought in smaller ships which are less efficient.

Sea Grant has demonstrated its potential to offer solutions to this problem by assisting in the development of the only deepwater facility in the United States capable of handling supertankers. This facility is now being built off Louisiana, and Sea Grant played a major role in assuring its expeditious and environmentally safe development. Sea Grant's early and continuing involvement with Louisiana Offshore Oil Port Inc. (LOOP), the

Louisiana Offshore Terminal Authority (LOTA) and the Louisiana Department of Wildlife and Fisheries in conducting environmental assessments and developing monitoring programs resulted in the commitment to environmental protection which typified all phases of project construction and operation. As a result, there have been no court dictated delays in project schedules because of environmental problems or perceived impacts.

In dealing with ports and harbor development in the future, Sea Grant will be able to offer a broad base of expertise to address such problem areas as dredged spoil disposal, ocean dumping, upriver salinity intrusion and wetland rejuvenation through freshwater diversion.

STATEMENT OF DONALD H. ROSENBERG, PRESIDENT, SEA GRANT ASSOCIATION

Senator WEICKER. Mr. Rosenberg.

Mr. ROSENBERG. I am Donald Rosenberg, president of the Sea Grant Association and director of the sea grant college program of the University of Alaska. The Sea Grant Association represents some 40 of our Nation's institutions of higher education, all of which are dedicated toward support of the concept established with the National Sea Grant College program. I am here today on behalf of the Association to testify with regard to the National Grant College program.

The National Sea Grant College program is this Nation's only comprehensive research and development, education and training partnership designed and directed toward not only the optimal exploitation of our oceans resources and Great Lakes resources but also toward understanding of these resources and their importance to mankind and the world ecosystem.

This partnership which Congress established consists of both industry, universities, and governments. Each of these partners has a unique and important responsibility in the partnership. The Federal responsibility is clear. The Federal Government has jurisdiction over a majority of the marine and Great Lake resources which the sea grant program addresses and therefore has a responsibility for assisting in their development and assuring their conversation. Additionally Congress clearly established that the sea grant program would have a broad interaction, interchanges, and impacts applying results nationwide in exactly the same way that our land grant college system has done and continue to do for our Nation's agricultural resources.

When Congress established the National Sea Grant College program, a commitment was struck. Congress called for a commitment from the partners to establish and maintain a network of sea grant colleges. This task is far from being completed. Only 60 percent of the planned sea grant colleges are established and the task of developing our Nation's marine resources has just begun. Continued Federal participation in this partnership is critical.

This participation, in our opinion, represents the basic threat linking the program into an effective nationwide network. This network insures application of the results to the Nation. It provides for an economic of unwarranted duplication and of waste and it enhances the efforts of each individual program by insuring participation by other programs throughout the network.

Member institutions of the Sea Grant Association strongly support the sea grant concept as developed by Congress. We have and will continue to support within our financial resources this important program. We feel that it would be a major mistake on the part of the Federal Government to withdraw from this productive partnership. We believe that sea grant must bear its share of austerity in these times, but we are strongly opposed to the Federal withdrawal.

You should note that Federal participation in this program has clearly not kept pace with the rising costs. The program has over the recent years already experienced a decrease in Federal dollars due to Federal inflation.

The Sea Grant Association, therefore, recommends you restore the Federal appropriation to the National Sea Grant College program to at least its current level. Thank you, Mr. Chairman, for the opportunity to speak on behalf of the National Sea Grant program.

Senator WEICKER. Thank you, Mr. Rosenberg.

[The statement follows:]

STATEMENT OF DONALD H. ROSENBERG

The Sea Grant Association represents 40 of our nation's Institutions of Higher Education, all of which are dedicated toward and support the concept Congress developed with the National Sea Grant College Act. These member institutions are appalled by the Administration's proposed termination of Federal participation for this important National Program. We find it inconceivable that the Administration, which has as one of its major economic platforms the reinstatement of industrial productivity in this nation, would propose the termination of the only university-based program aimed at industrial development in our nation's important marine and Great Lakes resources. We can only assume that the Administration did not understand the national importance of the Program, and that the Program's major direction is to assist in the development, wise use, and conservation of the marine resources of the United States. The Administration apparently did not understand that Congress intended that the Sea Grant Program be to our nation's marine industry, what the Land Grant Program is to our nation's agriculture industry.

A Comprehensive Partnership

The National Sea Grant College Program is this nation's only comprehensive research and development and educational/training partnership forged among governments, industry, and universities; designed and directed toward not only optimal exploitation of our nation's ocean and Great Lakes resources, but also toward the understanding of these resources and their importance to mankind and the world ecosystem. The Program is the most cost-effective approach to marine resource development and understanding, bringing the resources of not only the Federal Government to bear on national needs, but also those of local industry and governments.

Each of these Sea Grant partners has a unique responsibility and contribution:

> The Federal Government has jurisdiction over major ocean resources and, through essential program support, can ensure nationwide application of results;
>
> industry is concerned with generating profits and has the capacity to identify and underwrite those projects with the potential to create new wealth; and
>
> universities are responsible for objective inquiry and education and have the capacity not only to provide fundamental research from a multi-disciplinary talent pool, but also to address contemporary problems through education and advisory programs.

Our Nation's Marine Resources

The economic importance of our nation's marine and coastal resources has only recently been assessed (Science, Vol. 208, 30 May 1980). This analysis of the ocean economic sector in the National Income Accounting System (NIAS) places the ocean sector value at $30.6 billion in 1972 which is comparable to agriculture ($35.4 billion), transportation ($46.2 billion), and communications ($29.4 billion). This NIAS assessment is based upon nine major industrial subsectors:

1. Commercial Fishing
   (Harvesting, processing, and aquaculture)
2. Marine Mining
   (Oil and gas, sand and gravel, and limestone)
3. Marine Construction
4. Manufacturing
   (Ship and boat building)
5. Marine Transportation and Communications
   (Shipping, cargo handling and warehousing, transportation services, and marine-related communications)

6. Marine-related Retail Trade
   (Marine-related merchandising and retailing)

7. Marine Financing, Insurance, and Real Estate

8. Marine Services
   (Hotels, marine recreation, educational services, museums, and marine organizations)

9. Public Administration (state, local, Federal Government ocean-related activities)

A more recent assessment of the magnitude of the private marine sector has been conducted by an ad hoc Sea Grant Task Force. Considering all aspects of fishing, marine-related manufacturing, marine transportation, and marine-related tourism as the industries of primary concern to Sea Grant activities, it was found that total sales for these industries exceeded $56 billion in 1978, with employment in these industries over 1.4 million (represents an annual payroll of over $11 billion). Further, Department of Commerce figures indicate that sales within these industries increased 21.4 percent from 1977 to 1978 with an increase of 8 percent in employment, for a productivity increase of 14 percent in sales or shipment per person before adjustment for inflation.

Understanding the structure and characteristics of the industry and commerce components of the ocean sector is important. A preliminary analysis suggests, that with some exceptions such as the oil and gas industry, most of the components within the private marine sector are disaggregated and evolving in nature. The fisheries component for example, is comprised mainly of small independent businesses.

It is within this context that the National Sea Grant College Program functions, and it is within these industrial sectors that marine resource development activities are focused.

A Requirement for Federal Participation

The reason for the proposed termination of the Federal participation in the Program is best expressed in the statement by the Secretary of Commerce before this Committee on March 26, 1981. Secretary Baldrige stated, "The Sea Grant College Programs are primarily directed toward local, state, and regional needs. We are, therefore, proposing to terminate Federal funding in 1982 and to turn the responsibility for supporting these programs over to the states and private sources of funding."

The Sea Grant Association believes that the National Sea Grant College Act clearly states that it is the intent of Congress to use our nation's universities to aid in the development and utilization of the marine resources of the United States. We believe that the marine and Great Lakes resources of the United States are a national resource, not specifically belonging to states, regions or individuals. We find that the problems associated with and the benefits derived from the conservation and development of these resources are not limited to local regions or states. Sea Grant as established by Congress is clearly a Program designed to address these problems and issues from a national perspective. The National Sea Grant College Program should not be limited by region or state, but must be structured to have broad interactions, interchanges and impacts across our nation in exactly the same way that our Land Grant College system has done and continues to do for our nation's agriculture industry.

A Commitment for Participation

When the Congress of the United States established this Program, it established a partnership between Federal and state governments, universities, and the industry. It called for a commitment on the part of all of the participants. In response to this call, universities, states, and industry have made the long-term commitment which is necessary to meet the challenge set out in this National Program. In a short 12 years, the challenge is being met. It has been estimated that the program has led to increases in annual business gross revenues and savings in excess of $227 million. The Program impacts some 376,000 students, 44,200 pre-college teachers, and 502,000 individuals in marine-based industries and businesses. The Program has established a nationwide network within our universities of researchers, educators, and extension specialists and agents all working toward the goal set forth in the Sea Grant Act; that of developing our nation's marine and Great Lakes resources in the wisest manner and in the best interest of our nation.

The Federal participation in this partnership is critical. The common property nature of the majority of this nation's marine resources and the structure of the United States' industry involved in marine resource development mandates Federal participation in order to insure that long-term research is carried out and to insure the wise use and conservation of those resources. Federal participation also insures the application of research results on a nationwide basis and provides a check against unwarranted duplication and waste. Federal participation in this partnership represents the basic thread linking the Program into an effective nationwide network.

Conclusion

The member institutions of the Sea Grant Association strongly support the Sea Grant concept as developed by Congress. We have supported and will continue, within our financial resources, to support this important National Program. It would be a major mistake on the part of the Federal Government to withdraw from this productive partnership. We believe that Sea Grant must bear its share of austerity in these times, but we are strongly opposed to Federal withdrawal from the partnership. Congress should note that Federal participation in the Program has clearly not kept pace with rising costs. The Program has, over recent years, already experienced a decrease in Federal participation. We therefore recommend that Congress restore the Federal participation in the National Sea Grant College Program to at least the current level.

STATEMENT OF GUSTAVE FRITSCHIE, DIRECTOR OF GOVERNMENT RELATIONS, NATIONAL FISHERIES INSTITUTE

Senator WEICKER. Mr. Fritschie.

Mr. FRITSCHIE. Thank you. I am Gustave Fritschie, director of government relations of the National Fisheries Institute. The Institute represents about 1,000 member companies and associations involved in this Nation's seafood industry.

The two gentlemen preceding me discussed the sea grant program which we also support so I would like to focus my comments on other programs which are of particular interest to this Nation's seafood industry. At the outset, Mr. Rosenberg indicated in his testimony, the seafood industry is prepared to share in the effort underway to come up with a tax and budget program which will improve the economy.

Clearly the seafood industry will benefit from increased productivity, lower interest rates, and increased inflation. We do have questions of specific reductions in programs with limited or no direct use of tax dollars. Several proposed reductions appear to conflict with congressional intent specified in the American Fisheries Promotion Act passed last year by your colleagues and you and by the House of Representatives.

At this point, I would like to skip through my prepared text to the discussion of the Saltonstall/Kennedy program. As you are well aware, Mr. Chairman, the program has been in effect since the early 1950's to make funds derived from duties on import fisheries and marine products available for use by the Government to promote the sale of domestically produced fisherie products through fisheries technological, educational, biological and related programs. It is the long belief of the industry that these moneys were to be segregated from normal appropriations and not to be used to supplement NMFS base activities.

In recent years, however, previous administrations did not implement a program to use all available Saltonstall/Kennedy funds. The appropriations from Congress have transferred money from Saltonstall/Kennedy into operations research budget of NOAA.

Most recently deliberations on the fiscal year 1981 budget, Congress promoted to transfer $15 million in Saltonstall/Kennedy funding to various programs. At this time, those funds have been rescinded by the administration and as I recall reading last year's committee report, the committee indicated that was a one-time only transfer and the committee is committed to the goal of fisheries development.

In reaction to the transfer of Saltonstall/Kennedy funds, the industry strongly supported amendments adopted last year to the Saltonstall/Kennedy legislation which strengthened the requirement that funds be used in fisheries research and development projects. Without reading the pertinent language, it in essence provides not less than 50 percent of the moneys transferred to the fund and carry-over moneys in the fund shall be used for fisheries and fishery development projects and that the remainder of moneys would be used by NMFS in a coordinated fashion implement a national fisheries research and development program designed to complement the industry's efforts. NFI strongly believes that the new statutory language precludes transfer of Saltonstall/Kennedy funds in the absence of an amendment to the legislation adopted last year.

We strongly support the intent of the Saltonstall/Kennedy program as specified in the Fisheries Promotion Act, one to make the fund available to the industry and other interested parties for research and development projects, and second for the National Marine Fisheries Service to expeditiously develop a national research and education program to carry out those projects which may not be undertaken by the regional foundations.

As you are well aware of the review of Saltonstall/Kennedy projects funded during fiscal year 1980 reveals projects gear development, process innovation, consumer awareness, energy conservation export market and seafood quality. Clearly the industry is most interested in accelerating the development of the seafood industry in this country. It must be emphasized the funds are not derived from general tax revenues imposed on imported fisheries.

We wholeheartedly support the availability of all Saltonstall/Kennedy funds during fiscal year 1982, first for the industry research and development project, and second not for the space programing but for the national research and development program mandated by the Congress.

With that I would like to briefly indicate support for the Public Law 88–309 program. The Commercial Fisheries Research and Development Act passed some years ago has been a primary vehicle prior to SCMA to assist the States in carrying out fisheries management and growth development within the territorial city. The States have always had limited budgets in this particular area and the Federal assistance has been most vital, as you are well aware.

We believe that the limited funding previously available has indicated an awareness of the States Fisheries Conservation and Management Act related responsibility and the need to encourage both inter- and intrastate management of important territorial fisheries. We, therefore, support restoration of funding in the amount of $5 million for this program.

We also support a similar restoration of a similar cut in the anadromous fisheries grants program.

Finally, I would like to mention the fishery trade officers and export trade barriers. NFMS should be funded to assist the industry in expanding the overseas markets, both to the trade officers and with reference to eliminating overseas trade barriers to U.S. exports.

Finally, I would mention a proposal to cut research labs in Galveston, Tex. We think that proposal is not well founded and would eliminate the only laboratory in the gulf that side of Miami devoted to important fisheries research activities.

Mr. Chairman, in my prepared text, I discuss the loan guarantee program which you initially sponsored. We believe that should be an adequate obligation available under that program and I have in my prepared text indicated other areas that we believe could be cut without sacrificing programs in order to maintain the initiative in the fisheries development area. Thank you, sir.

[The statement follows:]

STATEMENT OF GUSTAVE FRITSCHIE

Mr. Chairman, I am Gustave Fritschie, Director of Government Relations for the National Fisheries Institute. The Institute is a national trade association representing more than 1,000 member companies and affiliated associations which harvest, process and distribute fish and seafood products. I am pleased to have this opportunity to appear before the subcommittee and present NFI's comments on the proposed FY 1982 budget for the National Oceanic and Atmospheric Administration.

The Institute recognizes that in order to meet the objectives of the President's economic program many government programs have been reduced from the previously reported 1982 budget estimates. The seafood industry supports the thrust of the President's tax and budget reduction efforts. Clearly, an improved economy with increased productivity, lowered interest rates, decreased inflation and higher disposable income will benefit this nation's seafood industry.

As I indicated above the Institute supports the need for budget reductions in order to meet the President's economic goals for the nation. We do, however, question specific reductions in programs which provide tangible benefits to the industry with limited or no direct use of tax dollars. Further, several proposed reductions appear to conflict with Congressional intent specified in the American Fisheries Promotion Act. In order to accomodate these important programs the Institute is prepared to recommend appropriate reductions in other areas of the NMFS budget and to provide our thoughts on a redefined mission for the agency which will permit the most productive use of limited federal funds.

The Institute suggests a new mission for the agency which would:

.discourage unnecessary development of fishery management plans and related basic research.

.encourage the use of the optimum yield concept to eliminate foreign fishing when there is a small difference between the domestic annual harvest and the total allowable catch in order to minimize the management burden and to encourage foreign trade.

.restructure an effective fishery habit and environmental impact program.

.reduce domestic fishery enforcement activities.

.review NMFS research activities to insure the compatability of that program, industry development and council management activities.

- .provide a priority for NMFS research which enables the agency to respond to unnecessary regulatory actions initiated by other government agencies.

- .eliminate barriers to the expeditious development of management plans and amendments including the application of the Federal Advisory Committee Act, the National Environmental Policy Act and Executive Order 1229.

- .focus NMFS development activities on the administration of the S/K grants program and a coordinated national research and development program.

- .strengthen the agency's ability to assist the Department of State in eliminating trade barriers to United States seafood exports.

- .eliminate export development efforts which duplicate or conflict with industry efforts.

- .reduce marine mammal and endangered species program activities.

The Institute believes this new direction for the agency will permit realistic budgetary reductions. In our opinion this approach is preferable to the elimination of programs which encourage decreased federal regulation and increased innovation, productivity and industry expansion.

Saltonstall/Kennedy Program

Mr. Chairman, at this point I would like to briefly discuss the Saltonstall/Kennedy Program as modified by section 210 of the American Fisheries Promotion Act, Public Law 96-561. That program, as you are well aware, has been in effect since the early 1950's to make funds derived from duties on imported fishery and marine products avilable for use by the government to promote the sale of domestically produced fishery products through fisheries educational, technological, biological, marketing and related programs. It has long been the belief of the industry that these monies were to be segregated from normal NMFS appropriations and were not to be used to supplement NMFS base program activities.

In recent years when previous Administrations did not implement a program to use all available funds the appropriations committees of the Congress transfered money from S/K into the operations, research and facilities budget. Most recently in deliberations on the FY 1981 budget Congress proposed the transfer of 15 million dollars in S/K funding to various NMFS programs. At this time those funds have been recinded by the Administration.

In a reaction to the transfer of S/K funds the industry strongly supported amendments which were adopted last year to the Saltonstall/Kennedy legislation to strengthen the requirement that the funds must be used for fishery research and development projects. Pertinent language provides that the monies shall,

> be maintained in a separate fund only for use by the Secretary (1) to provide financial assistance for the purpose of carrying out fisheries research and development projects approved under subsection (c), and (2) to implement the National Fisheries Research and Development Program provided for under subsection (d).

The legislation, as amended, further provides that not less than 50% of the monies transferred to the fund and carry over monies shall be used for fisheries research and development projects and that the remainder of the monies in the fund shall be used to implement the National Fisheries Research and Development Program designed to complement the industries' research and development efforts.

The Institute believes that the new statutory language precludes the transfer of Saltonstall/Kennedy funds in the absence of an amendment. NFI strongly supports the intent of the S/K program. It is a program which will enable the industry to meet its research and development needs, promote the international competitiveness of U.S. fish products and foster greater productivity and innovation. A review of S/K projects funded during fiscal year 1980 reveals projects dealing with gear development, processing innovations, consumer awareness, energy conservation, new product forms, export markets, and seafood quality. More than 50 million dollars in proposed projects were submitted, indicating the industries interest in accelerating the development of this nation's seafood industry. It must be emphasized that these funds are not derived from general tax revenues and represent a constructive use of the duties imposed on imported fish and marine products. We whole heartedly support the availability of S/K funding during fiscal year 1982.

Commercial Fisheries Research and Development Act

The Institute supports the restoration of the Public Law 88-309 program. This program provides grants to the states to cover 75% of the cost of commercial fishery research and development programs. These grants have permitted the states to augment limited budgets for fisheries management, research and development. The grant program has become more important since the enactment of the Magnuson Fisheries Conservation and Management Act and the subsequent demands imposed on the states to respond to the new council/state relationship. Particularly since two thirds of the fish landed in U.S. ports are harvested within the territorial seas there are significant management needs particularly with respect to fish found both within the FCZ and state waters.

In testimony submitted in February of last year by Mr. Irwin Alperin, Executive Director of the Atlantic States Marine Fisheries Commission, on the occasion of reauthorization hearings for this program he noted that the Connecticut Department of Environmental Protections Marine Region "cannot even continue its two current P.L. 88-309 program projects... and needs to initiate a new project for its most valuable Long Island Sound 2.5 million dollar lobster fishery." There are other examples of state programs which are unable, because of the level of federal funds available to continue funding of necessary research projects.

Clearly the limited federal funding presently available indicates an understanding of the states' MFCMA related requirement and the need to encourage inter and intra-state management of important territorial sea fisheries. We, therefore, support a restoration of funding in the amount of 5 million dollars for this program.

Anadromous Fisheries Grants

The Institute supports the restoration of 2 million dollars in funding for this program. This program and the 88-309 program discussed above have been effectively used in conjunction with state funds to implement vital research activities. The data accumulated is used by the states to coordinate management responsibilities with the regional fishery management councils and is important in view of recent pressures on the salmon resources caused by court and management decisions.

Fishery Trade Officers and Export Trade Barriers

The Institute supports an increase in funding for the National Marine Fisheries service of 500,000 dollars in order to permit the service to aggressively implement the provisions of the American Fisheries Promotion Act which provides for a reduction in overseas trade barriers. In particular the Institute supports funds for the fishery trade officer positions provided for under the Act.

Loan Guarantee Program

The pending budget proposes the new commitments to guarantee loans under the Federal Ship Financing Fund shall not exceed 75 million dollars of contingent liability for loan principle. The FY 1981 estimate for new loans is 88 million dollars and this does not reflect the extension of the loan guarantee fund to shoreside fishery facilities as provided for in the American Fisheries Promotion Act. The Institute believes that the ceiling on total commitments for new loans in fiscal year 1982 must be at least 100 million dollars.

Sea Grant

FY 1982 Request	$ 37 M
Reagan Decrease	$ 37 M
NFI Restoration	$ 14 M

The Sea Grant program established a matching grant program which provided for the establishment and operation of Sea Grant College and University research programs. Of particular interest to the NFI is the Marine Advisory Service program which brings education and extension activities to the commercial fishing industry and other marine environment users. The program has more than 300 extension agents who work with the industry through workshops and personal meetings. It is the primary vehicle for transferring research and technology to user groups. The Department of Agriculture has a similar but much more expensive program which has not been reduced.

The Institute believes that a limited but useful Sea Grant Program for the seafood industry can be implemented with a $14 million funding level as follows:

1 - Program Management	$ 1 M
2 - National Projects	$ .5 M
3 - Marine Advisory Services	$ 8 M
4 - Marine Technology Development	$ 4.5 M
	$14 M

Our prime support for these program components does not indicate a lack of support for other Sea Grant services. I believe other Sea Grant user groups can properly address these issues.

FY 1982 Budget Reductions

It would be easy for an industry group to suggest budget increases in the absence of significant reductions in NMFS programs. It would also be unfortunate if we did not exercise this opportunity to refocus the thrust of NMFS programs and policies. Set forth below are suggested reductions in the NMFS budget in line with our proposed new direction for the agency.

Marine Resources Monitoring Assessment and Prediction

Fy 1982 Request	$32 M
Decrease	$ 4 M
Change (-)	$ 4 M

This program is designed to provide comprehensive resource assessments and ecological and environmental information for use in developing national and international fishery conservation and management regimes. According to the agency the data is used in developing and implementing and enforcing FMP's regulations and allocation levels.

The Institute proposes a $4 million dollar reduction in this activity based on the premise that the fisheries are over-regulated and over-managed and that there can be reductions in the number of management plans prepared by regional councils and in the complex requirements of such plans. The Institute believes a funding level of $28 million dollars will permit the implementation of necessary programs and will produce the data deemed necessary by the regional fishery management councils and by the agency for use in international negotiations.

Conserving Marine Resources

FY 1982 Request	$ 30 M
Decrease	$ 6.2 M
Change (-)	$ 6.2 M

Programs under this subactivity are designed to provide data necessary to mitigate activities which may have adverse impacts on fishery resources. Funding for the Marine Mammal and Endangered Species programs are also provided under this line item.

The Institute proposed a $2 million dollar reduction in the $14 million dollars made available for fisheries habitat investigations and environmental impact analysis. In particular, the environmental impact analysis program is improperly focused on the numerous permits required by the Army Corp of Engineers and other agencies. We believe there can be significant reductions in the funding for environmental impact analysis. Similarly, while there is much merit in the fisheries habitat investigations program, we believe that relatively minor reductions in this program will permit the continuation of the more important program components.

The Institute recommends reducing by 50% or 3.7 million dollars the funding level for marine mammal protection activities. This proposal is in line with our proposed redirection for the agency which would significantly reduce marine mammal management activities and the need for significant amendments to the Marine Mammal Protection Act to permit more cohesive ecosystem management. If such amendments are adopted, requirements for permits, extensive public hearings and research will be significantly minimized.

A reduction of 25% or $500,000 is proposed for endangered species conservation. In assessing the agency' priorities, the Institute believes that the program can continue with decreased funding for the research and enforcement components of the endangered species program

Restoring and Increasing Fishery Resources

FY 1982 Request	$ 15.8 M
Reagan Decrease	$ 2 M
NFI Decrease	$ 1 M
Change (-)	$ 3 M

The Institute proposes an additional $1 million reduction or a total of $3 million in funding for aquaculture research and development. The reason for this proposal is a belief that development activities are the responsibility of industry and that, proposals for aquaculture expansion can be submitted under the provisions of the Saltonstall/Kennedy program.

Managing and Using Fishery Resources / Promote and Develop

FY 1982 Request	$ 42.5 M
Reagan Decrease	$ 1.1 M
NFI Decrease	$ 4.7 M
Change (-)	$ 5.8 M

The purpose of this activity is primarily related to the implementation of the Magnuson Fishery Conservation and Management Act.

The Institute proposes a cut of 15% in the State/Federal Fisheries Management budget or approximately $1.8 million dollars. This proposal is in line with our new direction for the agency which would reduce active involvement by the Federal government in the preparation and review of fishery management plans. It may also be possible to reduce the funding for the regional fishery management councils if, in fact, the councils prepare fewer fishery management plans and choose less complex management alternatives.

The Institute proposes a 15% reduction of $1.1 million dollars for fisheries enforcement and surveillance. This is predicated on the acceptance of our proposed new direction for the agency which would provide for the elimination of foreign fishing activities in many geographical areas. We also believe there is no need for an expanded domestic MFCMA enforcement program.

The Institute proposes a 10% reduction of $1.3 million dollars in the funding for economics and commercial fishery statistics. This reduction is predicated on less activity in the fishery management plan area and reduced efforts by the agency in fisheries development and aquaculture.

The Institute proposes a 10% reduction or approximately $500,000 in funding for the fisheries development, research and services. This proposal is in line with our propsed new direction for the agency which will focus NMFS development efforts on the administration of the S/K program.

The Institute supports the Administration's proposed reduction of $1.1 million dollars for export trade activities. It is the opinion of the industry that it is not necessary for the Service to expend these funds to develop a market research profile or to support coordination with the export marketing activities of the department's international trade administration. The primary focus on export should be to reduce overseas trade barriers as outlined in the development legislation and then permit the industry to independently develop export markets.

Mr. Chairman, thank you for the opportunity to testify. I am willing to respond to questions from you and other members of the committee.

Senator WEICKER. Thank you very much. I think it is important to note here, incidentally, two groups have already been heard, first that of public television, now of NOAA. It is my viewpoint that the funds invested come back many-fold in both these areas. This is not throwing Federal money down a rathole. We are talking about productivity investment of Federal moneys.

Gentlemen, thank you very much for your testimony.

ECONOMIC DEVELOPMENT ADMINISTRATION COMMISSIONS

STATEMENT OF JOHN D. WHISMAN, EXECUTIVE DIRECTOR, GOVERNOR'S COUNCIL ON REGIONAL DEVELOPMENT

Senator WEICKER. The next panel, No. 3, will discuss the budgets of the Economic Development Administration, Regional Development Commissions. Our witnesses are John D. Whisman, executive director, Governor's Council on Regional Development; Aliceann Wohlbruck, executive director, National Association of Development Organizations; and James R. Anderson, director of Makah Tribal Planning Department. Mr. Whisman, you may proceed with your statement.

Mr. WHISMAN. Thank you, sir. I am John Whisman, director of the Governor's Council on Regional Development. I will summarize my statement which you already have in full presented to you for the record. I work really for the Governor's of the eight regional commissions. I will say appearing here with Aliceann in indicating my own background in this work I participated some 25 years ago in the original organization of the development districts down in Kentucky, especially the Appalachian part of that State and worked for several Governors in that process.

Since that time, I have been working for Governors in one way or another on the original organization of the Appalachian Commission and the other commissions. Any comments that I make here, which will be very brief, I would like to associate support of the development districts as the organizational structure that we are concerned about right along with the regional commissions. They work hand in hand as a linkage to let government work closer to people.

I am really here to represent the Governor's position. All of the Governors and regional commissions met in their separate commissions on February 24 at the National Governors Conference. They then came together from those meetings with a stagecoach chairman in order to express their points of view on the current budget. I will summarize their position in four points at the end. I would like to comment briefly. I think they are trying to say something rather unique to you gentlemen in the Congress. The first thing they have done is perhaps different from most people suffering from the budget cuts, they support, and I use the word they have instructed me to use, the zero budget for fiscal year 1982. They do that to emphasize their tremendous concern with the process and, what they are concerned about keeping in place through the period of the Congressional authorization, which ends in September of 1982 regardless, is this organization and process frankly so that it can undergo the proper kind of evaluation. They oppose the rescission of the 1981 funds, but they have made that point in the process of communicating by letter with Governor Snelling, who is the chairman of our council, and a letter that was developed with all the Governors, to Secretary Baldridge, expressing the desire to consult on the program.

This, gentlemen, is the key question I am here to express which I think you need to know about as you consider the budget questions.

The response to that letter has not been completed. There has been and it is in process, in fact the answer may have already gone, I am not aware but I know that it is, we worked on it. I know a response will be made by the secretary and by the administration. The Governors are simply saying, and you talked about the gentleman in OMB a while ago, they have not swum in this one either, Senator. They dealt with a concern for the budget and the Governors are saying in order to simplify this question, we yield completely on the question of the budget. That doesn't mean they don't want the project dollars. It means they want to emphasize how much they want to maintain in the process.

The second thing they are trying to say is they really want a period of time in which we can properly deal with a transition, if it is to be terminated, of responsibilities that have grown over 15 years. And these are not project grants that they are concerned about. And I will only cite one example because it is somewhat dramatic.

When the MX missile is installed in the Western part of the country, the impact of those missiles on the international situation is one thing, but the impact and the expenditure of $60 million in development on the people of that environment is another thing. The Governors, the local people have all found the Four Corners Regional Commission to be the most acceptable device to deal with the question of how do you meet the impact, how do you deal with the drain on the water, the impact on the land, the impact on the people. That does not represent a cost out of these commission funds. That simply represents using the process to deal with money that is going to be spent, $60 million or some amount of money. The Governors are saying they would like to keep this organization in place. To do that, they would need a continuation of the Federal portion of the administrative costs and very minor costs that would come out of these current fiscal year 1981 funds. I don't think they are even necessarily saying they need the entire amount.

Along with that, and I want to come to the final point, the Governors have already begun to put in place the State money with which they share that cost. If the Federal establishment decides to terminate the commissions, obviously the Governors will not voluntarily share in that cost. That simply means the bottom line is that the management of termination or the management of an evaluation during this next 10 or 12 months in order for the Congress and the administration to take a look at this process in the light of other changes, where there are block grants or whatever happens to the question of future funding, the Governors are saying this process will be more useful in the future than it has been in the past, that it will work more effectively with other funding systems and with categorical grants.

They would like that evaluation to take place. The final test, Senator, would be whether you found that evaluation adequate to be reflected in new authorizing legislation because the commissions would die if they fail to meet that test in September, a year away. That basically states my point.

[The statement follows:]

STATEMENT OF JOHN D. WHISMAN

I am John D. Whisman, Executive Director of the Governors' Council on Regional Development. The Council consists of the States Cochairmen Governors of the eight Commissions. It represents all state members in development of Commission policy and procedures at the national level.

My purpose is to present statements by Governor Richard A. Snelling, of Vermont, Chairman of our Council and Lt. Governor Lou Wangberg of Minnesota, representing our Vice-Chairman, Governor Albert H. Quie. These statements outline the position of Governors on the Regional Program as developed at joint meetings of Governors in all Commissions on February 24th.

I will summarize the Governors position and add brief comments based on my own experience. I've worked with the idea of area development districts and Regional Commissions for over twenty-five years, since the original organization of development districts in Kentucky and ten years in the organization of the Appalachian Commission before the Regional Development legislation was enacted. I've worked with ARC, the Title V's, Districts, Governors and local officials ever since.

The concept for these organizations did not begin in Washington or even in government. The basic design for the Appalachian program was worked out by private leaders at the local level; was then further developed by Governors who proposed it to the Congress.

Much of the development process in action today, has evolved from that design. With the accelerated government role in development, in the 60's, the organizations worked to use government programs. But the purpose was to shape public policy to enhance private development. Now, when emerging intent is clearly focused on accelerating the private role, these organizations -- even now more privately oriented than governmental -- are prepared for transition to even greater service.

It would be costly and wasteful to dismantle these basic developmental structures and processes at the time of their greatest need and greatest potential for service.

I want to emphasize the Governors' concern that, in intensive effort to find budget cut dollars, the budget reviewers would needlessly dismantle a mechanism of far greater value. Built from past investment and now operational without significant future cost, this mechanism can have productive impact on such funds as are to be spent in any case -- while still gaining the basic budget cut as proposed.

Governors specifically propose:

1. To support zero budget for FY'82.
2. To oppose rescission on FY'81 funds, and to continue operation of Commissions into '82 as authorized by Congress, to allow:
   (a) Effective administration of existing commitments. The Rescission proposal is not based on consultation with Governors nor on an appraisal of such commitments.

   (b) Transition of important responsibilities placed in Commissions by Governors -- assigning them to other agencies in case of termination or to a successor organization in case of reauthorization.

   (c) Establishment of a Demonstration and Evaluation effort in '82 to modify the process and to assist in the expected shifts of state and federal funding and program arrangements -- involving block grants or whatever systems emerge -- with no new project funds directly allocated to Commissions.

   (d) Consultation with the Administration and Congress as to how or whether new authorizing legislation should draw from the Commission experience to create a useful mechanism and process to continue.

Note that Governors are not asking to keep "project money," voluntarily supporting zero budget in '82 in overall support of budget reduction.

But they are committing themselves and their state governments to support of a process they believe to be workable and of even greater importance in potential use than in its past use. Their commitment means a commitment of state funds, of state administrative and program support, not to capture federal funds, but to preserve the process.

In six of the eight Commissions, Governors have agreed that the Commissions will not, in fact, be terminated. In whatever form they can be maintained, the Governors have determined to keep the structure and process in place and operating.

The obvious question has already been asked, "Why not let the states continue, as they please, but without a federal partner?"

The answer is equally obvious. The basic purpose, by definition, has been to have a workable states-federal partnership. The Commissions are not just multi-state, they are state-federal. They form a link in the total local, state and federal relationship of the federal system. In each region, the federal system is at work, with nothing left out, with no overlay added. Here local, state and federal government are convened in constant attention to an agenda specified to the common concerns of their region, differing in whatever way it may from other regions and from the nation.

Governors and other participants have found that this process works. It helps key program managers to improve decisions; to sharpen the focus of multiple programs on identified problems or opportunities.

While Commissions have been seen largely in the visible administration of grant projects, they have increasingly emphasized the treatment of larger regional issues -- from regional hazardous waste disposal in New England, and development of a regional seafood industry in Coastal Plains to assisting states and localities prepare to meet the regional impact of the MX Missile development and massive energy development in the West. These significant activities have uniquely demonstrated the low-cost, high benefit role of Commissions -- there simply is no other mechanism to which such activity can be shifted.

The process simply helps the federal system meet changing problems, without changing the parts of the system. Problems are larger, more complex, changing more rapidly. The nation operates more on a national scale, but the national problems of development and the environment, energy or transportation, must be treated differently in New England and in the West.

The states and localities are still good scales for administration of programs -- but they must join in regional agreement for consistent strategy on actions to meet major goals. They need to deal in partnership with the federal establishment in its impact on each region -- however implemented -- based on national concerns and policies.

Two major questions are at issue in the bold changes of the proposed national economy recovery program and its impact on those concerned with development.

First, what should government do and what should private enterprise do?

Second, to what degree will actions to strengthen the national economy -- if successful -- leave a need for specific public and private developmental action in subnational regions and areas to assure sound economic impact and beneficial development for each area?

Without defining answers, four points are worth noting.

1. Current change is likely to diminish public intervention, increase private action.
2. In any case, public and private responsibilities and impacts will remain and major interdependency will continue. Public policy will remain a major determinant as to where, how, when and whether private action is initiated or succeeds.
3. Current proposals move toward larger emphasis on the national economy, less specific mechanisms or actions concerned with subnational impact. There is some presumption that states or other interests will attempt to meet the recognized need. However, states and localities will still have to deal with major impacts of federal policies and programs.
4. Regional Commissions have always operated on an over-riding objective to shape an environment of public policy to facilitate maximum private enterprise initiative. The greater the private role, the more important is their objective, as a key market place impact. With many market factors centering on state lines -- cities, rivers, resource areas, transportation systems -- the regional environment is a key element in the national economy. In either concern, the need for an applicable mechanism is apparent and the existing Regional Commissions and substate districts hold a practical potential to serve effectively.

Governors simply feel that this process is too important to lose. Its continuation for modification and evaluation this year -- while other program changes are being worked out -- can be achieved while giving up the basic budget funds for project grants.

The demonstration and evaluation of the Commissions needs to be an element of the overall federalism reviews being made by the National Governors' Association, the Advisory Commission on Intergovernmental Relations, a commission appointed by President Reagan and studies authorized by the Congress.

For all those reasons it is essential to distinguish between the zero budget for projects in FY'82, and the retention of '81 funds to allow either a responsible phase out or transition, based on serious evaluation. Termination of Commissions would be automatic at the end of the authorization in FY'82. Their continuation would follow only a judgment of the Administration and Congress expressed in new authorizing legislation. Termination of the partnership institutions should not occur unilaterally, by action aimed at budget cuts, taken without an appraisal of other factors in consultation with the Governor members.

Governors have proposed consultation with the Administration in the letter from Governor Snelling to Commerce Secretary Baldrige. I believe that responses are now being provided and that discussions can begin soon. Without attempting to suggest the conclusion to be reached, I feel confident that it will provide a useful way to proceed.

This year's review of the operation of the federal system is concerned with restoring greater responsibility for domestic programs to state and local government and for modernization of processes to be more responsive to contemporary problems and opportunities. In the opinion of virtually all who have actually participated in the regional and area development processes, they can make a real contribution to both of these objectives.

STATEMENT OF ALICEANN WOHLBRUCK, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS

Senator WEICKER. Thank you very much. Aliceann Wohlbruck.

Ms. WOHLBRUCK. I am executive director of the National Association of Development Organizations. I am presenting testimony of the president of this Association. Herman Tushaus. He is unable to be here. We do appreciate your interest in having grass roots organizations testify. We are very concerned about the proposed elimination of the Economic Development Administration and other development programs like the title V commissions. I just will summarize Mr. Tushaus' written statement and ask that it be included in the record.

The National Association of Development Organizations represents the executive directors, local elected officials and business people who are members of the substate, multicounty economic development districts. Our members provide technical assistance, development and planning expertise to local governments and private companies in order to increase and maintain private sector jobs, primarily in rural and nonmetropolitan areas.

A list of our board of directors is attached to the statements. You can see what kind of people are involved in the association.

The Reagan administration, as you know, proposes a rescission of $342 million for EDA in fiscal year 1981 and virtually elimination of the agency in fiscal 1982. Our statement summarizes the position. You have given facts in your statement about the budget on the Senate floor. I don't need to repeat them. We thank you for setting the record straight about EDA.

The members of NATO share the administration's goal of reducing Federal spending and directing incentives to stimulate the Nation's economy but we disagree with their analysis of the effectiveness of EDA and their call for its abrupt elimination. During its 15 year history, the Economic Development Administration with a relatively modest investment of $4.7 billion has generated 1.4 million jobs in the private sector, leveraged $9 billion in private capital and return $6.5 billion annually to Federal, State, and local governments.

This investment of seed money in communities and businesses which have not participated in the general economic prosperity of our Nation has and can continue to strengthen the country's overall economy. The EDA's approach has two basic elements. One is a partnership with the private sector and, two, a minimum of control from Washington. We think both of these are directly in line with what the Reagan administration are proposing for economic recovery. A list of current EDA programs on pages two and three of the testimony and on these programs we believe the most important ones as far as carrying on basic economic development, especially in rural areas, are the development loans and resolving loans for businesses, the basic public works program and the blank grants which assist institutionalization on the process to help local government and citizens. EDA authorizes and funds 270 districts and the average grant in these districts is $53,000, which is a very small investment that has provided great returns in terms of private job creation, and even though the Congress is still debating the budget, the citizens and governments served by districts have already been adversely affected and are in a close-down phase and many of these programs are going out of business.

We don't think there will be anything, especially in rural areas, to help locate governments and private institutions to determine what are the priorities for funding what Federal funds are left.

While you could reduce the investment budget, and that might do away with a particular project, if you lose the entire network of grass roots organizations that you put in place, especially in rural areas, these small businesses will have nowhere else to turn for expertise. A large percentage of the country is eligible now under the criteria Congress has set. As you pointed out in your floor statement, CBO showed 25 percent of the eligible counties is actually served.

The House committees have committed itself to reviewing the criteria and making sure the program funds are targeted to urban and rural areas of greatest need for rural areas, the EDA program, working through the districts, is absolutely essential. This is where an investment of public funds, as you mentioned on these other programs, has resulted in pay off of private jobs. Although my colleagues in the urban area are not here, I would like to state for the record that the National League of Cities, U.S. Conference of Mayors, and National Conference of Counties are also supporting continuation of EDA.

On page 4 of our testimony we summarize the specific development problems that are faced by many rural areas which are not exciting enough, of course, to make the front page of the U.S. Times or the Washington Post, but one important recent study on the structure of American agriculture pointed out that many small farmers, which is also a concern of this administration, are able to keep their farms because of outside jobs and the availability of jobs according to the study is the most serious economic problem for [illegible] farmers. So we see no justification for elimination of all of these rural development programs.

And on page 5, we have a chart which shows all of the cuts being proposed in rural economic development programs and I would make one correction for the record on title V commissions, it should be Mr. Reagan is proposing $21 million which will be a 47-percent cut and the urban development action grants program is only being proposed for a 13-percent cut and if you review this chart, our world programs are going to be cut anywhere from 50 to 100 percent. We believe rural citizens should be given equal treatment with urban residents. I would like to read from the Republican platform which says:

> Attention to the quality of life in our rural areas is a vital necessity because rural Americans impart a special strength to the national character. It is our goal to assure that all rural citizens, whether they are farmers or not, have the same considerations in matters of economic development, in energy, credit and transportation, and in employment opportunities which is given to those who live in towns and cities. The opportunity for nonfarm jobs enhances the ability of people to live and work in rural America * * *

We hope the administration will review the platform and perhaps take another look at the budget cuts.

Senator WEICKER. That is probably the only part of the Republican platform that made any sense. I wouldn't take either party's platform as wholly right. I am sure my padres back there would agree. If there was ever an aspect of American politics that is best done away with, it is that.

We always talk about credibility in politics and we continue to write platforms and continue to throw them out the minute we write them. That was my testimony. In New York City I appeared before the Republican Platform Committee. I suggest we do not write the platform. There was stone silence on that. Let me put it this way:

I am far more convinced by the logic of your argument than I am by my party's platform.

Ms. WOHLBRUCK. Just two more studies that I would like to quote because I think it confirms statements you made, Senator, and some things about the economic recovery program that concerns us, one of the functions of EDA districts has been to develop infrastructure at the local level. And there is a new study out by the academy for contemporary problems that really shows the major problems facing this country because of decline in public facilities.

You can't have private development, as we all know, without some kind of public investment. Today's Star has an article by Representative Bill Clinger, Republican from Pennsylvania, called "Pork Barrel Holds More Than Fat", which goes through the need for some kind of infrastructure development.

EDA is one program that has really provided that. Without that we don't think there will be anything available.

Another study by the Council for Northeast Economic Action, which I think you are familiar with, which shows unmet capital demand is much greater in rural areas. For all types of firms, the financially sound as well as highly leveraged ones—it is consistently more difficult to obtain intermediate and long-term capital in rural areas and suburban and city locations. That is another program that has been very successful in EDA. We would recommend three things, one, the 1981 funding for EDA should be $462 million. That would be a 25-percent cut as opposed to the 55-percent reduction proposed by the President.

Two, we recommend that in 1982 we provide $360 million for EDA for programs and $170 million for loan guarantees, which will be a 40-percent reduction rather than a 90-percent cut.

Next we ask that rural areas not be asked to take a disproportionate share of cuts in Federal aid for development programs; and third, we would support the continuation of the grassroots network of development organizations to insure EDA funds will be targeted to areas of greatest needs as determined by local decisionmakers.

Thank you.

[The statement follows:]

STATEMENT OF HERMAN TUSHAUS, PRESIDENT, NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS

Mr. Chairman, I am Aliceann Wohlbruck, Executive Director of the National Association of Development Organizations (NADO). I am here today presenting the testimony of Herman Tushaus President of NADO, because he was unable to be here himself. We appreciate the chairman's and subcommittee's interest in hearing from grassroots organizations, like ours, which are deeply concerned about the future of the Economic Development Administration and other regional development programs such as Title V Commissions.

BACKGROUND - NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS

The National Association of Development Organizations represents executive directors, local elected officials and business people who are members of sub-state, multi-county economic development districts, area-wide planning agencies and councils of governments. Our member organizations provide technical assistance, development and planning expertise to local governments and private companies in order to increase and maintain private sector jobs, primarily in rural and nonmetropolitan areas.

ADMINISTRATION'S VIEWS ON THE ECONOMIC DEVELOPMENT ADMINISTRATION (EDA), AND TITLE V COMMISSIONS

The Reagan administration proposes a rescission of $342 million for fiscal year 1981 and virtual elimination of the agency in fiscal year 1982. The Director of the Office of Management and Budget David Stockman has stated, "We believe that government must essentially get out of the business of economic development and job creation...." Secretary of Commerce Malcolm Baldridge in his testimony before this Subcommittee said, "This administration has decided to reduce the role and size of the federal government and return decisionmaking to other levels of government and business where such a course makes sense." In testimony before the House Secretary Baldridge criticized EDA because it has deviated from its original purpose of providing "special financial assistance to those few economically distressed areas in the country which were bypassed by general economic prosperity."

Recent reports issued by the Office of Management and Budget cite the cost per job created by EDA as one of the major reasons for elimination of the program as follows:

> "There is no convincing evidence that these programs have been effective in creating new jobs or capital investment, or are actually needed to promote local and regional economic development. Studies indicate that the total cost per job created by an EDA development grant is on the order of $60,000 to $70,000 for a person each year of employment."

The Administration has requested a rescission of $23 million of 1981 funds and elimination of Title V Regional Commissions in 1982 noting their disbelief that federal involvement has resulted in any type of regional development.

In place of sub-national economic development programs, the President recommends a national recovery program of reductions in federal spending, regulatory reform and tax proposals for individual tax liability and corporate tax incentives to stimulate the economy. Recognizing the need for some type of minimal sub-national economic development program, the Administration advocates the establishment of "enterprise zones" in distressed areas, but this concept has not yet been clearly defined by the Administration.

NADO's VIEWS ON EDA

The members of the National Association of Development Organizations share the Administration's goal of reducing federal spending and directing incentives to stimulate the nation's economy but disagree with the Administration's analysis of the effectiveness of EDA and their call for its abrupt elimination.

During its 15 year history, the Economic Development Administration with a relatively modest investment of $4.7 billion has generated 1.4 million jobs in the private sector, leveraged $9 billion in private capital and returns $6.5 billion annually to federal, state and local governments. This investment of seed money in communities and businesses which have not participated in the general economic prosperity of our nation has and can continue to strengthen the country's overall economy.

The Economic Development Administration's approach to creating jobs has two basic elements:

- a partnership with the private sector to develop long-term commercial and industrial growth in distressed areas
- a minimum of control from Washington and miximum local participation so that community needs are met

Current EDA programs are:

Planning - Administrative support for districts, states, counties, cities, communities and Indians to establish economic development programs.

Technical Assistance - Special economic development information and expertise for firms and communities.

Basic Public Works - Construction and rehabilitation of public facilities that support economic growth

Development Loans and Guarantees - Credit assistnace to firms for job retention, expansion and creation. This is particularly important to rural communities where credit has been traditionally difficult to obtain.

Economic Adjustment Assistance - Technical advice and loans and guarantees to trade-impacted firms and communities.

Research and Evaluation - Information on economic development issues to improve decision-making and programs.

In its efforts to improve local programs and include officials and citizens of eligible communities, EDA authorizes and funds multi-county economic development districts. Since passage of the Public Works and Economic Development Act in 1965, 270 districts have been designated which include over 1,500 counties and hundreds of towns and cities. The average grant to districts is $53,000 which provides a small professional staff to assist dozens of local governments and private businesses.

These economic development districts promote multi-county cooperation in planning and development to build a solid economic base in depressed areas and those affected by economic dislocation. District boards are composed of local government officials as well as business and civic leaders. Private and public sectors work together to develop an overall economic development program to improve the area's economy.

Districts promote long-term economic development by creating a better climate for private sector investment. The direct benefits derived from such planning include reductions in the unemployment rates, a strengthening of local tax bases and an increase in personal incomes.

Even though the Congress is still debating the budget, the citizens and governments served by districts have already been adversely affected by the President's cuts because funds have been withheld from them for planning and projects. In the past EDA has provided funds on a continuing (year-to-year) basis to pay part of the administrative costs incurred in the planning, programming, and implementation of state and local economic development programs. These funds have put into place a network of institutions at the grassroots level capable of addressing economic problems and needs that are uniquely local or regional in nature. Their continued existence and functioning is an essential component of an effective decentralized federal aid system. In fact, as federal development funds shrink, the role of these EDA-funded institutions becomes all the more critical to the ability of local governments to become more self-sufficient, to generate private sector economic activity, and to allocate scarce resources in an effective way. While reductions in the EDA investment budget might result in the loss of a potential development project for a community, the loss of an EDA planning grant might permanently destroy the community's entire capacity to plan, operate and manage its long-term economic development effort. For this reason, the cost-efficiency of budget cuts in the planning and capacity building area must be seriously questioned.

While a large percent of the country is eligible under the present criteria established by Congress, in practice the agency working with districts and other planning recipients administratively targets funds to areas of greatest need, as determined by local officials and private businesspeople. Unlike other federal programs, EDA does not create a large backlog of applications to justify increased appropriations. The agency is very selective in working with districts and localities to identify the best potential projects which will create the greatest number of jobs and leverage the most private investment. A recent report by the Congressional Budget Office showed that only 25 percent of eligible counties were served by EDA. The House Public Works Committee has already indicated their desire to re-examine the eligibility criteria to ensure that the program funds are targeted to urban and rural areas of greatest need.

At present one half of EDA funds are spent in rural areas. Our members are sensitive to the needs of urban residents, but we believe rural residents and small governments should not be asked to take a disproportionate share of budget cuts.

For rural areas, the EDA program, working through the districts is absolutely essential. It is one federal program where investment of public funds has resulted in a payoff in private jobs.

RURAL DEVELOPMENT NEEDS - SUBNATIONAL DISPARITIES

As with urban areas, some rural areas are growing but others continue to decline. Growth as well as decline places new burdens and pressures on local governments. In growth areas the demand for services is up, and the need for new private sector jobs is evident. The recent U.S. Department of Agriculture Structures study has showed that many small farmers are able to keep their farms because of outside jobs. The availability of jobs, according to the study, is the most serious economic problem for small farmers.

Despite growth in certain regions, there is a lack of opportunity in many rural regions due to structural unemployment, poverty, industrial decline and lack of basic public facilities. Consider these facts:

- 40 percent of the nation's poor live in rural areas
- 27 percent of rural Hispanic and 38 percent of rural Blacks live on incomes below the poverty level
- 40 percent of all Native Americans, living in rural areas live on incomes below the poverty level
- in 1977, the average annual income of women working full-time in rural areas was only 54 percent of the income of rural men
- 35 percent of all households in rural regions are headed by women
- rural housing units seriously lack proper plumbing. Over two million Americans do not have running water in their homes.

NADO agrees with statements made on the Senate floor by Chairman Weicker that by eliminating EDA the Administration "would pull the plug completely on one of the best targeted programs and (would) leave many regions of the United States waiting for the macro effects to trickle down."

No matter how successful the Administration's national economic policies might be in stimulating the overall growth and reducing inflation and unemployment, NADO believes that distressed rural areas will continue to need the kind of assistance provided by EDA.

The Administration has recognized the need for federal aid for economic development programs in urban areas by recommending continuation of the Urban Development Action Grant (UDAG) program.

The UDAG program was originally slated for elimination, but the Administration reversed itself and is only reducing the combined Community Development Block Grant/UDAG program by $584 million in 1982 which is only a 13 percent reduction in this combined grant. Large cities will be able to use federal funds for economic development while rural communities will not. Although 25 percent of UDAG is reserved for small cities, it is very difficult for them to participate in this program, because of rigorous program requirements.

EDA, an agency which rural regions rely upon heavily for development assistance and business credit, has been a major target of administration budget cutters. OMB has suggested that local officials in these non-metropolitan areas turn to the Farmers Home Administration (FmHA) for development funds. However, FmHA development loan and planning programs have been recommended by the White House for significant funding reductions. And, the Appalachian Regional Commission (ARC) is also being eliminated so rural areas in the 13 ARC states will be cut further.

While the Subcommittee on Commerce, Justice and State does not have jurisdiction over all economic development programs, it is important to understand the deep cuts that are being proposed in all rural development programs. The chart below illustrates these cuts:

($ millions)

Program	Appropr. '81	Reagan '81	Percent Cut '81	Reagan '82	Percent Cut '82	
EDA	$624	$282	-55%	$32	-95%	
Title V	44	27	-39%	0	-100%	
ARC	340	220	-35%	0	-100%	
FmHA						
- Sec. 111 Plan.	5	3	-40%	0	-100%	
- Sec. 601 Ener. Imp.	62	10	-84%	0	-100%	
- W & S Loans	750	590	-21%	0*(300)		(-60%)
- W & S Grants	203	203	0	0*(100)		(-51%)
- Comm. Fac.	260	260	0	130	-50%	
- B & I	741	741	0	0	-100%	

* Administration proposes new legislation to increase interest rates and would provide "0" until bill is passed. Amounts in ( ) are proposed.

NADO members believe rural citizens should be given the same consideration as urban residents. Our members heartily endorse the sentiments expressed in the Republican Platform:

> "Attention to the quality fo life in our rural areas is a vital necessity because rural Americans impart a special strength to the national character. It is our goal to assure that all rural citizens - whether they are farmers or not - have the same considerations in matters of economic development, in energy, credit and transportation, and in employment opportunities which is given to those who live in towns and cities. The opportunity for non-farm jobs enhances the ability of people to live and work in rural America in the decade ahead, and our redication to a prosperious and energetic rural America is part and parcel of our commitment ot make America great again."

The President's plan for economic recovery and the platform on which he was elected are in direct conflict.

The White House assumes that economic development and growth will naturally follow implementation of the proposed recovery program. The positive effects of the national policy are expected to "trickle down" to the local levels. The Reagan administration believes small communities in rural areas will benefit, not from direct government involvement and assistance, but through private initiative made possible by less government intervention.

Several recent studies, however, point to unique rural problems which will not be solved by national policies.

For example, few firms will locate or expand in areas where the most basic public facilities are inadequate or not in place.

Economic Development Districts have assisted local governments in obtaining federal aid for the establishment of water and waste disposal system; the laying and paving of roads; and the building of dams and bridges. These are not luxurious or extravagent expenditures but basic facilities which must be available for private development.

Proper infrastructure development and maintenance is vitally important and linked to private sector investment. Communities which have proper infrastructure facilities have a better chance of attracting and retaining private business and industry.

A study conducted by the Academy for Contemporary Problems clearly indicates the need for such development:

> "A large and growing number of communities are now hamstrung in their economic revitalization efforts because their basic public facilities -- their streets, roads, water systems and sewerage treatment plants -- are either too limited, obsolete, or worn out to sustain a modernized industrial economy. A Department of Commerce survey of 6,870 communities' wastewater treatment capacity reports that 3,133 (46 percent) of these systems are operating at 80 percent of capacity or higher. The same survey indicates that 1,844 of 55,622 places have water treatment systems operating at 70 percent or greater capacity. When deficient transportation, publicly operated solid and toxic waste disposal sites, and other public facilities essential to private sector investment are also considered, at least one-half (and more likely two-thirds)of the nation's communities are unable to support modernized development until major new investments are made in their basic public facilities that undergird the economy.
>
> A number of studies have attempted to measure the influence of public works on the location and investment decisions of individual firms. The most comprehensive study was conducted in the mid-1970s by the Bureau of Census for the Economic Development Administration. Over 2,000 firms operating in 254 distinct product classes were examined. Each firm was asked whether the availability of certain public works facilities were either: (1) critical; (2) significant; or (3) of minimal value in their location decisions. The survey indicated that for virtually all of the 254 categories studied, the availability of public works facilities was either of critical or significant importance to location decisions. The availability of public facilities was almost always a more important locational consideration than the existence of local tax incentives or local industrial revenue bond financing."

Assisting local communities in developing infrastructure facilities is a major function of the EDA. The agency's planning and development grants have provided small towns, counties and cities with the technical assistance needed for such activity.

Public investment in public works projects has decreased in recent years. Between 1965 and 1977 such investments have fallen by 21 percent. The need for this public investment is clear and the private sector has not shown a willingness to take over the government's role in supplying these services. This leaves some serious questions concerning business expansion and employment, as follows:

- o Does the Administration believe private business will locate in areas where infrastructure facilities are poor or lacking?
- o Does the Administration expect the private sector to invest in the unprofitable business of building dams, bridges, roads and sewage treatment plants?
- o Will rural areas be faced with a "no growth" policy because all economic development funds will be available to only urban areas?

In addition to the infrastructure development through public works grants, EDA aid is available to business for the purchase or repair of fixed assets or for working capital. During 1980, 105 loans and guarantees under the EDA business development program were made. Of firms assisted, 92 percent were small businesses and 30 percent were new starts. These funds saved or created jobs in many distressed rural areas. A recent study by the Council for Northeast Economic Action has shown that credit needs for small businesses (the primary creator of new jobs in the U.S.) are much more severe in non-metropolitan regions. The Council's report "An Empirical Analysis of Unmet Demand in Domestic Capital Markets in Five U.S. Regions" summarizes rural area problems as follows:

> Unmet Capital Demand is Highest in Rural Areas
>
> For all types of firms -- the financially sound as well as highly leveraged ones -- it is consistently more difficult to obtain intermediate - and long-term capital in rural areas than in suburban and city locations. This seems to be an intuitively correct finding and reflects the traditional conservative lending practices of rural financing institutions. Moreover, advantages of city location tend to equalize the ratios of unmet demand for highly-leveraged and financially sound firms. There are virtually no significant variations in the demand for and supply of short-term capital in city, suburb, and rural locations.

NADO RECOMMENDATIONS

1. The Economic Development Administration's funds should not be cut by $342 million in 1981 or eliminated in 1982.

NADO members recommend that EDA programs be funded in 1981 at a level of $462 million which will permit urban and rural areas to continue or complete ongoing or committed projects. This would be a 25 percent cut ($162 million rescission) in the 1981 appropriation rather than the 55 percent reduction ($342 million rescission) proposed by the President.

National macroeconomic policies are not sufficient to ameliorate subnational economic disparities. That is why the Economic Development Administration has long been addressing structural problems in cooperation with states and communities, facilitating the creation of permanent, private sector job opportunities, and mitigating the problems of economic distress which inevitably accompany growth and change in a dynamic, free market economy.

NADO recommends that at least $360 million be provided for the EDA programs and $117 million for loan guarantees in 1982 --a 40 percent reduction rather than the 95 percent cut proposed by the Administration. As this testimony and many studies have shown, the need for a subnational economic development program will not be eliminated by the President's economic recovery program.

2. Rural areas should not be asked to take a disproportionate share of cuts in federal aid for development programs.

By supporting a 25 percent reduction in EDA for 1981 and a 40 percent reduction in 1982 from the $625 million appropriated in 1981, rural areas will still be taking a larger percentage cut than that proposed for urban development programs. We believe this reduced level is the minimum that rural areas should expect since other rural development programs are also experiencing drastic reductions.

3. EDA's grassroots network of development organizations should be maintained to insure that EDA's funds will continue to be targeted to areas of greatest need as determined by local decisionmakers from the public and private sector.

The continued existence and functioning of development districts is an essential component of an effective decentralized federal aid system. In fact, as federal development funds shrink, the role of these institutions becomes all the more critical to the ability of distressed rural localities to become more self-suficient to generate private sector economic activity, and to allocate scarce resources in an effective way. While reductions in the EDA investment budget might result in the loss of a potential development project for a community, the loss of an EDA planning grant might permanently destroy the region's entire capacity to plan, operate and manage its long-term economic development effort. For this reason, the cost-efficiency of budget cuts in this area must be seriously questioned.

STATEMENT OF LOU WANGBERG, LIEUTENANT GOVERNOR OF MINNESOTA

I am Lou Wangberg, Lt. Governor of Minnesota. I speak here today on behalf of both myself and Governor Albert Quie, who is Vice-Chairman of the National Governors' Council on Regional Development. Governor Quie has appointed me as his representative on the Upper Great Lakes Regional Commission. I certainly want to express my appreciation to this Committee for the opportunity to talk with you and especially to address Chairman Oberstar and the ranking minority leader Tom Hagedorn -- both of Minnesota. I compliment the members of this Committee on their obvious judgment of leadership ability.

I come to this discussion of an important part of the President's Economic Recovery Progran, as a person who has a record and a reputation as a fiscal conservative in public life. I completely support and respect the excellent application of this philosophy in the President's Economic Recovery proposals.

Neither am I here to file one of those statements which says "cut the budget, but don't touch my program." I'm very pleased that the position adopted by consensus among the many governors, and one in which I concur, is in agreement with the need to cut the budget and would expect a reduction in the budgets for regional commissions. Our purpose is also open on the ultimate future form of the regional commission program. But, we do want the program continued.

The regional commissions have never been well funded. In comparison with programs such as EDA and the Appalachian Commission, Title V Commissions have not even been adequately funded in the past. I know that members of this Committee would agree on that point. The regional commission budget request, as originally proposed last year, would have provided $74 million for all eight of the Title V Commissions. This was later reduced in the budget revision by President Carter, to $43.8 million. Given theneed for budget cuts at that time, there was no protest from governors at this reduction. Today, we would accept an added cut, recognizing that each program must sacrifice to meet the major goal of overall spending reductions.

But there has been no inconsistencies by governors in accepting reduction in funds for commissions and their respect for the great value of maintaining some level of funding at which commission effectiveness could be utilized, especially, in impacting investments of furds other than those budgeted directly to commissions. At a time when large funds were budgeted to development programs generally, the governors felt that a larger proportion of funds could be better used through the regional commission process. Today, the governors would simply make a major difference between further reduction of budgets for commissions and the question of terminating the entire structure and process of the commissions.

It is this point on which the governors have agreed and upon which the proposal being presented by Governor Snelling has been prepared and for which I want to speak in support.

In completing the work on budget revisions, under severe time pressures, and with misunderstandings which sometimes affect the regional commission apprcach, I believe that the draftors of budget revisions have made a major misjudgment in overlooking the value of the basic structure and process of the regional commissions. They have overlooked the complete approval by governors, local officials and many others for this program -- in spite of a past budget level which has been so small that such support must be viewed as somewhat unlikely. What has found favor in the regional commission approach has not been the number of dollars which has flowed, but the process by which the governors have delivered those dollars in a way to respond to the judgment and meet the needs of state and local people.

The specific proposal of the governors is being provided to you in Governor Snelling's testimony. I will simply summarize the proposal and provide some added comments to assist you in your judgment.

The governors first feel that an immediate termination of the commissions, as would be brought about by approval of rescission, would not serve any purpose well -- whether the commissions are to be phased out or continued. Therefore, the governors strongly believe that there must be an opportunity in the remaining part of this fiscal year, to provide for the orderly management of the work of the commissions now underway. The same period of time, would allow rational consideration for the continuation of the commissions, and their use in the framework of other development programs in the future.

Put simply, if the rescission of FY '81 funds were not adopted, even with little or no appropriation in FY '82, the FY '81 funds could be used to complete current commitments responsibly and could be carried over to support a demonstration and evaluation activity through '82. From this experience -- in conjunction with similar program development activity by ARC and EDA and others -- recommendations could be provided this Committee and the Administration to assist in design of new authorizing legislation required by FY '82.

Governors have agreed to develop initial recommendations by April to affect commission work in '81 and '82. Their later recommendations would be related to other changes evolving in the same period. If, EDA were ended (and we hope not) the state and local governments would simply have to take on more aggressive activity and funding in the field of development. This means that the development of industrial sites and the provision of the public services and facilities that are required by commercial and industrial development would have to go on. If there is a continuation of EDA, but based on some new ideas and new program approaches, the great possibility is that the involvement of state and local decisions -- and especially the kind of decisions that must be approved by the state legislature and the governor -- would be required for successful development to occur. For instance, in the case of the proposed enterprise zones, it would be clear that the local tax arrangements would be affected. This, of course, cannot be dealt with without approaching basic changes in state tax laws, which, as you know, govern local tax arrangements in most all states.

My purpose is not to attempt to predict what kinds of changes your Committee and the Congress may provide. I am simply saying that any kind of changes, especially, those of the kind that appear to be coming, and those which will impinge more directly upon state and local laws and responsibilities, will need and will benefit by the negotiation and decision process of the regional commissions.

It would, therefore, be extremely wrong in terms of cost-effectiveness to abandon the process in which we have invested 15 years of funding and experience and which has such a capability to serve in this critical year of program review, new design and demonstration.

The position of the governors on continuation of the regional commissions is consistent with the governors position on the overall impact of the entire economic recovery program. The governors have subscribed completely to the budget cuts in principle but they have indicated especially that these changes in the manner of federal funding and the possibility of increased reliance on state funding should be managed with enough flexibility to allow lead time in the states so that they may undertake the responsibilities involved in a cost effective manner.

Three basic factors affect the governors position.

1. Governors have major responsibilities in commissions which cannot be reasonably handled in sudden unilateral federal action for termination.
   - The commissions are not federal agencies, commission funds are shared state and federal, commission employees are neither state nor federal, commission policy decisions can only be made by a vote of a majority of governors present as a quorum, in combination with the affirmative vote of the Federal Cochairman.
   - Long term agreements, official regional development plans and other shared commitments have caused various state, federal, local and private agencies to adopt corollary policies and commitments.
   - Reasonable treatment of these matters can be identified and treated responsibly - for phase out or other disposition - in the 90-day period. It cannot be done in 30 days.
2. Governors have expressed strong agreement that the basic commission structure and process, tested in 15 years of experience, must be maintained, not lost.
   - The process is low cost but can have major impact on effectiveness of other program investments.
   - The commission structure can well serve both the President and governors in the adjustments required in making major changes anticipated in state and federal responsibilities.
   - As block grants or other approaches return funds and responsibilities to the states, the need for practical state-federal partnership on state, regional and national interests will become more important, not less.
3. We are equally concerned that the use of the process be improved for the future.
   - As governors and the President work for restrengthening the federal system, this process can become a key element in the "new federalism" - and commissions can help facilitate current work for this goal.
   - The process can serve a much broaders scope than that of economic development, although its use in that area can continue.
   - Organization needs to strengthen the state-federal relationship, especially the link between governors and the Office of the President. The programs past history is one of much misunderstanding and misuse, making its evaluation difficult. Its potential and best use precisely serves the intended principles of this Administration.
   - Governors will recommend specific improvements for consideration and agreement. One proposal being evaluated would be to relate the functions now separately served by commissions (primarily, inter-

governmental) and Federal Regional Councils (primarily serving federal interagency relations.)

Let me make clear that we are not thinking about operating the commissions without project money or that we see the commissions simply in a planning and information role. We are saying that in this period of intensive review of both program concepts and funding sources or delivery systems, the commissions can play a principle role in working with you and the Administration in arriving at final determinations. We see the next year as a period of review and evaluation and the probable design of new systems. We strongly believe that when the new systems are in place, that the basic structure and process of the regional commissions will be an important part. Whatever the source or delivery system for funds, whatever the changed roles of federal, state, local or private agencies, the commissions partnership negotiating process will allow us to assist the combined final impact to meet objectives more effectively.

Especially, it should be noted that the increased emphasis on development action by private enterprise will require more and more the negotiation of public policies to create an environment in which private interests can best function. Even if public development programs were not funded, as proposed, there would remain major impacts of government programs and regulations on the economy. In many cases, these impacts would involve the need for joint policy agreement among the three levels of government. And often these agreements would be best negotiated and applied at a regional level.

The Upper Great Lakes portion of Michigan, Wisconsin and Minnesota are more different from the remaining parts of our states than either of our states differ from the others.

Through the commission, our three states have cooperated in dealing with the unusual regional situations affecting natural resources, mining, timbering, fishing, farming, community facilities, tourism, transportation, commercial or industrial development. While the states or local agencies themselves have carried out a wide array of projects, the commission process has enabled us to tie these projects more effectively to objectives to serve an overall development strategy for the region.

I know that a brief description of some projects for each commission is being provided by the Governors' Council on Regional Development, along with the text of Governor Snelling, Chairman of the Council. I won't take time to describe projects of our region but I invite you to review them. I would only add that, in most instances, the projects have been the action part of a much broader approach to program development, as a result of which many other projects by various agencies continue to contribute more effectively to regional development.

Let me conclude with an added comment on fiscal conservatism. I'm afraid we too often concentrate on the savings or the reduction of funds and stop short on the need to see that remaining expenditures -- at whatever level -- are spent more efficiently and effectively. We believe that the process employed by our commissions can serve this objective, even at minimal cost of the process itself.

Although I believe the past experience supports a highly favorable evaluation on this score, I believe the potential is even greater. If you wanted to design a unit to fit in with the other parts of our public process in serving this purpose, you would end up with something much like the local, state, federal partnership of the regional commissions. Their design in bringing decision executives together, in dealing beyond state lines and in working with a wide range of programs and agencies, and in concentrating on special and priority needs, naturally adds two major elements to the public process.

1. The FLEXIBILITY to adopt to special circumstances, to supply missing ingredients, to assist other units to work together, and to move quickly at policy decision levels.

2. The TARGETING capability, based on a comprehensive development strategy in which priority objectives can be agreed upon and the partnership negotiation which makes such agreement practical.

I know that today this program is in jeopardy. I don't believe it has ever been given a real chance to meet this potential and I know this affects some judgments. But I believe I feel that I am here not so much just to ask you to give this idea its chance. Instead, I'm here to commit to you our determination to use this process; to work with you in fitting it in with the design of other program changes you may make to achieve more consolidated effort, more effective action; and to reach for the potential in service we know it can achieve.

STATEMENT OF RICHARD A. SNELLING, GOVERNOR OF VERMONT

I am Governor Richard A. Snelling of Vermont. I've served the past year as the States' Cochairman of the New England Regional Commission and as the Vice-Chairman of the National Governors' Council on Regional Development. I am now Chairman of the Governors' Council and was delegated by Regional Commission Governors to present their basic position on the future of the Regional Development Program authorized by Title V of the Public Works and Economic Development Act.

The Governors' Council on Regional Development consists of the States' Cochairmen of the Regional Development Commissions. The Appalachian States' office and representatives of Governors of the three newly designated regions also participate with us. The Governors' Council was formed as a part of the intensive efforts of the Governors over the past two years to utilize the Regional Development Commissions more effectively and to apply them to more important purposes. While Governors have a full partnership responsibility within each Commission, we have discovered that the Governors, the States' Cochairmen, and the Federal Cochairmen, need a specific mechanism to deal with those national policies which directly affect the operation of all Commissions.

My purpose here today is to:

1. Present to you the Governors' proposal to the Administration to allow continuation of the important structure and process through a period of demonstration and evaluation -- as a basis for either orderly phase out or determination of future program.

2. Report to you on the current status of the Commissions, their improvement and their potential capability for the demonstration activity and for further service.

3. Discuss the nature of the proposed demonstration activity and the approach to future program.

During the Winter Conference of the National Governors' Association, on February 24, all eight of the Title V Regional Commissions and the Appalachian Commission held simultaneous meetings. It should be noted, in passing, that this event is in itself an historic demonstration of the opportunity for Governors of the entire nation to bring their attention at one time and place to the specific regional differences of major national concerns at issue in the National Governors' Conference.

At the several meetings, a general consensus developed and was communicated, through the States' Cochairmen of the various Commissions, to me as Chairman of our Council. On the following day, February 25, I met with Secretary of Commerce Malcolm Baldrige and presented the views of the Governors. Those views were confirmed, then, by letter of February 27 and I will simply quote directly from my letter to sum up the proposal.

> "As I know you are aware, the governors went on record overwhelmingly in support of the objectives of President Reagan's Economic Recovery proposal. What I am suggesting here is not in conflict with those objectives but is a specific call to work together to adjust one of those recommendations.
>
> As I discussed with you, I firmly believe that there needs to be a process for convening governors of states with common boundaries, climate and economic conditions with a representative of the President and other regional officials of the federal government. This has, to a limited extent, and I hope will more fully, insure cooperation from federal agencies when it is needed and insures national administration policies are properly adopted or tuned for a specific region. Regional commissions have been perceived primarily in their role as regional economic development agencies. I believe that they have provided a much more significant role as a convenor. In every part of the country where Title V commissions have existed, there are prominent examples of cooperation under the mantle of the Regional Commissions.
>
> The immediate concern of the governors is that the pending proposal for April 1 termination fails to recognize the practical intent of

this law to provide for equally shared responsibility and does not allow the analysis and consultation necessary to assure both the governors and the federal government an opportunity to reasonably exercise their responsibilities. As such, I would propose the following:

1. Defer submission of the rescission until June 30. The governors will support a budget cut and the final amount should be based on requirements determined essential to existing obligations or costs of any agreed further steps.
2. Place a hold on unilateral federal steps for termination until governors and the federal partners agree on the manner and the scheduled disposition of the program.
3. During this 90-day consultation stage, governors will develop recommendations within March to work out agreement in April in time to implement agreed actions effectively. We would request the President to designate a representative of the Office of Intergovernmental Affairs to work with us in a wide range of liaison and policy considerations which may be required.
4. Our intent is twofold:
    a. To prepare for the phase-out of current project activity in a manner to allow for both cost-effectiveness and the transition of responsibilities in those project areas where on-going commitments are involved.
    b. To devise an agreement with the President for retention, redesign and best use of the basic process. We will work to create a revitalized version of this practical concept -- for which Governors have given their endorsement -- to serve our joint interests as this Administration moves forward to implement the President's policy goals.

Finally, I would like to point out that a resolution by the Appalachian Regional Commission adopted this week in Washington, in essence recognizes the similar concern for a process of regional cooperation with the federal government.

I look forward to your response and for the opportunity to begin the discussion this program warrants."

It is my understanding at this date that the rescission proposal is not yet postponed. I would hope, however, that consultation with the Administration can now commence as the Governors have requested.

As a result of specific improvement activities, the Commissions are now operating more effectively and are being used by the Governors and their federal partners to address more important, policy level, purposes in dealing with principal development issues in our regions. A number of these improvements, recommended by Governors, were incorporated in the legislation developed by your committee and passed by both Houses but not enacted into law last year.

Our intent was to devote this year and FY '82 to design and demonstration of commission programs under the new law. This demonstration can still be developed under your extension of the original Act through FY '82. We would place new emphasis on the principal problems affecting the entire nation, but impacting each region in distinctly different ways. We would use the Commission as a principal mechanism for negotiation of most effective program action in our states based on a regional development strategy. In the Demonstration we could provide effective recommendations for your development of future authorization for FY '83 and future years.

In the Governors' concern with a complete review of the federal system, we have begun a "sorting out process." Our purpose is to review the functions and responsibilities of government to determine those best performed at local, state or federal levels within the most effective functioning of the overall system. This sorting out process will be very similar to the sorting out process employed by the Administration in reviewing individual programs of the federal government. For the regional development program, there may have been more of just cutting out than the kind of sorting out which the program merits.

There is no question but that the Governors support the Administration's goal for reductions of federal spending and economic recovery. However, it is extremely important that, in cutting the budget, care be taken not to lose some of the valuable elements produced in our working experience with some programs.

Two questions are involved. One is to cut the budget. The Regional Commissions budget, not including Appalachia, was reduced in FY '81 from $74 million to $44 million, a major cut accepted by Governors. We are prepared to accept an additional reduction now. But the second question concerns the valuable use of the Commission process to affect whatever levels of budget, whatever systems of funding follow the reviews and changes of the President and this Congress. We do not want to lose the process.

It is this aspect of the program which we want to preserve, to improve, to demonstrate and, as we work with the President and Congress in the next few months, to incorporate into future authorizing legislation.

The budget question of the future, however, is not, "How much money do the Commissions need?"

Rather, it can be, "How much money to be budgeted for various program purposes can be better used through involvement in the partnership Regional Development Process."

More and more in recent years the Governors have used the Commissions as a mechanism to develop "negotiated policies and investments" among various state and federal agencies to focus their programs on both the national interest and the regional differences. We have found the Commissions to have a national potential for allowing local, state and federal -- as well as private -- interests to reach agreement on practical action together. The Commission process bridges long term development strategy with decisions affecting immediate objectives.

Funding for the Commissions, as this Committee knows, has always been extremely modest with the exception of Appalachia. Contrary to the idea that the Governors like this program because of their access to funding, I can assure you that Governors have often found themselves involved in the work of the Commission to a degree much greater than the level of funds has ever justified. The rewarding feature has been the opportunity for Governors to work together at the regional scale and to impact selected programs in a realistic way not otherwise possible. Especially as new funding systems are developed, this feature can be modified and used with great benefit.

As one illustration of such capability, let me outline the work of my own Commission in treating the critical question of hazardous waste disposal in the New England states.

Three years ago, members of the business community and government anticipated imminent federal regulations to specify what they were to do with the waste produced in the region. The became concerned that New England had no disposal facilities. A 26-member advisory group was established under the auspices of the Commission. Included were representatives of the private sector (Ciba-Geigy Pharmaceuticals, Polaroid, United Technologies, etc.) plus public representatives -- from civic and environmental groups.

The Commission first sponsored a long-range study of the hazardous waste problem in New England, the first look at the problem from a multi-state perspective. A much needed public education program with conferences, a speakers' bureau and concentrated use of media was set up to inform the public of the necessity for some sort of hazardous waste site and to educate them on what a site actually was. Four handbooks were written laying out, in laymen's terms, the criteria for siting acceptable hazardous waste facilities. These handbooks were distributed throughout the region and were well received. Three sites are now under consideration in the region and a decision is to be made this year.

In the meantime, the governors of the region adopted a uniform manifest system for trucking hazardous waste from initial pick up to final deposit. This was developed with the involvement of the private sector, plus both state and federal government and is the first such system in the country.

In my region we have used this approach to strengthen state and local area management of major problems in which multi-state and federal consideration can only be met at the regional level and with a ready and available continuing negotiating process. We have greatly improved regional agreement on a range of concerns from transportation and international trade to conversion from oil to wood heat in commercial, industrial and residential use.

In the Four Corners Region, the Commission has been used by the states to deal with the impact of the MX Missile. In a major agreement between the Air Force and the Commission, $5 million in Air Force funds is combined with $500 thousand in Commission funds to assess the impact and to assist the state and local areas to develop their own capacity to plan and manage programs to deal with anticipated problems -- and opportunities.

Now, observing the successful undertaking on the MX, the states and local areas impacted by development of the Trident Missile have now worked out agreement with the Navy to use the Coastal Plains Commission for similar purpose.

These two defense related projects are not typical of Commission projects -- but they typify the practical and unique capability of the Commission process.

I am attaching some brief project descriptions, drawn from the greater range of Commissions activity, but presenting some less known but important Commission concerns. These projects also demonstrate the diverse use for the basic process to impact any selected objective in terms of:

Project and Program design

Targetting of efforts

Coordination of multi-agency or intergovernmental efforts

Relating action projects to specific regional development objectives

Relating local, regional and national interests

Dealing with special situations and needs

Stimulating innovation and demonstrating practical applications.

Commission projects vary in cost from very modest to substantial. But, in each case the supplemental Commission funds are very small -- and are not more important than other low cost Commission resources -- technical assistance, information management, development of plans and strategies, and advocacy for regional interests.

Thus -- even in the past era of "grantsmanship" -- the greatest value of Commissions have been in the development of processes to assist other agencies, public and private, to focus their functions more effectively on development objectives of larger scope.

The Commission role is always supplemental -- to design, to assist, to advocate, to coordinate, but not to duplicate work of existing agencies. Thus, as the Commission works with functional agencies they can continue the work as part of their regular program.

Let us make clear that Commission supplemental funding has often been an essential element in achieving results. It is likely in innovative projects, shared by several agencies, that some costs cannot be met within limited budgets or authority of any one agency. Thus, flexible funding -- joined with broad authority, technical expertise and top policy leadership capability -- become the catalytic additive for creative design and cooperative action.

As a time of new approaches begins, with shifts in responsibilities among federal, state and local governments and between public and private interests, the role of the Commission can and must be modified, but will be no less useful. Even as much federal funding may shift to state and local management, the need will remain to relate the impact of continuing federal regulations, programs, and other impacts in the national interest to specific local or regional needs. The partnership interaction of state and federal members on the Commission can continue to adapt to service of this need during a transition in program approaches and after new approaches are developed.

STATEMENT OF JAMES R. ANDERSON, DIRECTOR, MAKAH TRIBAL PLANNING DEPARTMENT

Senator WEICKER. Mr. Anderson.

Mr. ANDERSON. I am James R. Anderson, director of Makah Tribal Planning Department. With me in the room is Tribal Vice Chairman Robert Aiken. We are submitting testimony and I won't try to be redundant. The Makah Indian Reservation is located on the far Northwestern tip of the Continental United States. It is a great place to live if you have a job. The Tribe is vitally interested in the future of EDA because of its impact on efforts to develop our community. This has been a goal which has been supported by five previous administrations and I am sure to a certain extent it is supported by the Reagan administration.

We appreciate this opportunity to discuss with the subcommittee the numerous reasons why EDA must be continued. We, like others, are prepared to take some reasonable cuts but not disproportionate. Indian country accounts for fourtenths of 1 percent of the total population and it is taking about 3 percent of the cuts.

I would like to leave this room with the knowledge that I have given you several reasons why EDA is needed, some information on what they have done for the Indian country and some of the expectations that Makah Tribal Council has for EDA in the future. Before I do this I would like to provide you with at least a historical context in which to consider my remarks.

First of all, the problem is enormous. Unemployment averages over 40 percent, in some cases almost 70 percent of the work force. Under employment, that is those that are working, is almost 50 percent. The Makah Reservation depends heavily on fisheries and forestry and when the economy is down, they suffer.

Housing is also very poor. Another context is that private lenders are extremely reluctant to hold money on the reservations. We have problems of land status which creates a red lining effect; we have a lack of business experience creating further problems. There has been a lack of infrastructure on the reservation and as previously stated, the infrastructure needs continual assistance to maintain a serviceable level. Most reservations are also very isolated and they lack transportation.

The training level of the work force is also low. Why is EDA needed? Since EDA was established in 1965, they have been dealing effectively with unique circumstances of Indian reservations. They have done so by generally creating an atmosphere conducive to industrial development. The statistics are available, but I won't discuss them here. EDA has created this infrastructure and has also provided financial assistance for grants and loans. Above all else EDA has provided planning and technical assistance to Tribal governments. Until 1965, there was little comprehensive planning on reservations. Since that time, most reservations have undertaken a rather complex and comprehensive planning program designed to improve the communities. Without EDA and, I might say, HUD, CSA and some of the other agencies, progress will be reversed.

Now is an especially bad time for EDA to be discontinued. Most of the development efforts on the reservations have centered around infrastructure which has and will continue to be necessary, but the future of many tribes now rests on the provision of key venture capital to induce outside developers to expand the reservation. Various programs and incentives have and will continue to exist on the outside but there are really none for the reservations.

Without EDA we will have some real problems. On the Makah Reservation, EDA has been very active and important. About 12 years ago, EDA assisted the tribal house service with a water and sewerage system. They provided funding for a fish rendering plant. They have, along with the tribe, provided assistance for a very beautiful and spectacular museum which houses the Moseth artifacts which many of you may have heard about.

We have a small business center which is operational and a number of people are employed there. We are now working extensively on a fish processing plant to take advantage of certain Federal resources available to us. I discuss that rather extensively in the testimony and I won't go into that now, but resting on the successful development of fish processes in the plant is a marina complex which basically will provide long-term employment to our community but without the fish processing plant we will be in trouble.

We are also looking at ways in which to increase our revenues from our forest products and tourism.

In summary, EDA has done a real job on the reservation. They have made the difference between hope and stagnation. They have provided private sector jobs, they have provided a tribal government and they have given an improved quality of life.

In short, EDA has provided the tribe with hope for tomorrow, true private sector development to replace what has also been termed or coined as public welfare economy.

Other Indian tribes have common interest with the Makah Tribe and they must be heard. It would be a tragic blow to the Indian country if Congress terminates the EDA. Our situation is very similar to rural areas and I can only concur.

Senator WEICKER. Thank you very much, Mr. Anderson. And thank you all for your testimony.

[The statement follows:]

STATEMENT OF JAMES R. ANDERSON

My name is James Anderson, Director of the Makah Tribal Planning Department, and I have been authorized by the Makah Tribe to submit this statement on its behalf. I appreciate this opportunity to address the critical role which the Economic Development Administration has played on the Makah Indian Reservation in connection with community and economic development.

The Makah Reservation covers approximately 44 square miles in the extreme northwest corner of the Olympic Peninsula in the State of Washington. The reservation is bounded by the Pacific Ocean to the west and the Strait of Juan de Fuca to the north. The Reservation terrain is isolated, rugged, and mountainous, and is endowed with miles of spectacular beaches and scenery which annually attract more than 200,000 outsiders to the Reservation, especially in the summer months.

The Makah Tribe has a Tribal government organized pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. §476. Shortly after organizing under this legislation, the Tribe adopted a constitution in which economic self-sufficiency was established as a long-term goal. The Tribe has since consistently endeavored to achieve and sustain an effective economic planning program with primary responsibility for community development on the Reservation.

The obstacles to sustained economic development on the Reservation, however, have proved to be especially difficult to overcome. A major problem has been the Tribal economy itself, which is heavily dependent on the use of natural resources such as fisheries and forest products. Reliance on these sectors has made the economy subject to extreme cyclical fluctuations which result in employment peaks and slumps. The Tribal unemployment rate, for example, peaks during the winter months at two-thirds of the labor force and drops to one-third of the labor force during the summer months when fishing opportunities are available. An equally critical problem is underemployment, which, according to a Reservation demographic survey conducted in 1977, is 54 percent of the Tribal labor force. In addition, the Reservation initially lacked necessary infrastructure for development, such as a water and sewer system and adequate housing.

The Economic Development Administration was created in 1965 to promote the long-range economic development of areas with persistent unemployment and low per capita income and, in doing so, to address the general range of problems I have discussed above. In 1967, E.D.A. established an Indian desk in order to focus more specifically on the unique developmental problems facing Indian tribes.

The Tribe and E.D.A. have made tremendous strides in the past sixteen years in dealing effectively with the circumstances surrounding Tribal economic development primarily by creating an environment conducive to private development on the Reservation. Initially, the Tribe and E.D.A. worked jointly to establish the infrastructure critical to the promotion of economic development on the Reservation. A Tribal sewer and water system was completed in 1967 with E.D.A. funding which now is extensively used by private businesses on the Reservation waterfront. Furthermore, over a hundred units of new housing have been constructed as a result of development of the water and sewer system. Indeed, because of the foregoing E.D.A. assistance, the Tribe was able to increase the number of Reservation households which were owned to a level of 63 percent, and was able to reduce the number of households lacking adequate bathroom facilities from 24 percent prior to E.D.A. involvement to only 3 percent at the present time. My point is that the development strategy of the Tribe could not initially have been implemented without the assistance of the Economic Development Administration established by the Public Works and Economic Development Act.

It is in the area of providing technical and economic planning assistance, however, that E.D.A. has made its greatest and most irreplaceable contribution to the development efforts of the Tribe. First, for the past six years E.D.A. has funded the Tribal planning office, which has enabled the Tribe through an annual overall economic development plan to make informed and sensible choices among its economic development options.

Second, when the critical need in the development of local maritime and tourism industries was identified in 1978, the Tribe turned to E.D.A. for essential technical assistance grants to study the feasibility of renovating the harbor, constructing a commercial vessel marina, and establishing more tourism facilities. The Tribe also recently has finished construction of a related business center in which commercial leases are now being taken. This complex, which is expected to stimulate the expansion of the private sector on the Reservation, could not have been developed without E.D.A. technical assistance.

Perhaps the most important project which the Tribe is now planning with E.D.A., however, is the construction of a fish processing plant on the Reservation waterfront. The Tribe has invested eighteen months of planning and over $100,000 in the proposed facility, which will generate products derived from groundfish, black cod, and salmon, and will create over fifty full-time positions. A Seattle based seafood processing corporation has pledged operating capital in the amount of $900,000 per year and also has agreed to provide operating equipment and management expertise.

E.D.A. has been deeply involved in the development of this plant, and was actively considering providing $1,000,000 in seed money for the project. The proposed elimination of E.D.A., however, threatens to eliminate this badly needed and economically viable project. Without E.D.A. assistance, it is unlikely the plant ever will be constructed.

The proposed plant, if completed, would greatly enhance the Reservation fisheries industry and measurably increase private sector employment. Indeed, the plant would complement the fisheries enhancement efforts of the Makah National Fish Hatchery, a $15 million project managed jointly by the U.S. Fish and Wildlife Service and the Tribe and scheduled to begin operation late this year. Upon operation of the new hatchery, the Tribe will work to preserve the salmon fishery for the benefit of the community and the entire commercial fishery in Washington waters -- and for the benefit of the consumer as well.

In order to continue its progress, the Tribe will require specific federal assistance in developing facilities essential for private business. The Makah Tribal Council has authorized me to urge on its behalf that the important programs established by the Public Works and Economic Development Act should be continued. An elimination of these programs at this time will jeopardize the ability of the Makah people to thrive in an economic climate offering promise and opportunity. We respectfully request that this Subcommittee, therefore, assist the Makah Tribe in developing long-term solutions to our economic problems by funding the Economic Development Administration.

FOREIGN AFFAIRS PROGRAMS

STATEMENT OF KENNETH W. BLEAKLEY, PRESIDENT, AMERICAN FOREIGN SERVICE ASSOCIATION

Senator WEICKER. The fourth panel will be discussing the Foreign Affairs program. We have with us Kenneth Bleakley, president of the American Foreign Service Association; Thomas Gittins, secretary of the Consortium for International Citizen Exchange; and Father Collins, special assistant for Federal Relations and Father Bradley, director of international programs from Georgetown University. Gentlemen, Father, nice to have you here. I now am going to turn over the chair to Senator Cochran from Mississippi. I can only say as I depart the room, I delivered this message this morning when we had ICA before us.

I repeat again if this nation wants to effectively have its philosophies understood and/or propose those philosophies stated to you, that is a task, I think, as much for minds as it is for hardware.

I think the sooner we come to that realization the more successful we are going to be here throughout the world. I know what you are here to speak on. It addresses itself to that aspect of our policy. It is an aspect which has been underplayed. So in any event, you have a good man here to listen to more.

Senator COCHRAN [presiding.] We are going to miss you, Mr. Chairman. Mr. Bleakley, would you like to begin.

Mr. BLEAKLEY. Thank you very much, Mr. Chairman. Mr. Chairman, you just arrived. In the course of the afternoon, I have been terribly impressed by the series of witnesses representing highly articulate constituencies for various Federal programs.

I am Ken Bleakley, president of the American Foreign Service Association. I represent 11,000 foreign service people, right around 213 posts around the world. Most of them are not even in this country. I took annual leave this afternoon to come before this country. I think it is the first time someone representing the American Foreign Service has appealed.

Senator COCHRAN. Your constituency is in effect Foreign Service officers?

Mr. BLEAKLEY. And staff.

Senator COCHRAN. And staff.

Mr. BLEAKLEY. Yes, sir. There are 11,000 of us, as I said, around the world. Most of them overseas. There used to be more; 20 years ago we had more than that. Coincident with the U.S. growth as a world power and burgeoning responsibility, every year people doing these essential responsibilities overseas has been eroded.

I was heartened by the words of Senator Weicker a few minutes ago.

Senator, I think I would like to start by telling you just how proud we are of the mission we do perform overseas. It has gotten a lot of attention in the last year. more attention than we are used to. We believe the attention that is focused now on our national security is something of vital concern to us as it is to the American people. National security really has three instruments, a strong and effective military, an effective and quiet clandestine service for intelligence and an effective diplomacy, a strong one.

Senator, we believe in the past years, we have not had an American public constituency. The vital question as to whether or not concentrating on billions of dollars necessary in order to improve our national security and national defense and in order to improve our clandestine intelligence networks, have we overlooked the important factor of those marginal thousands of dollars that field the grains and support the grains to make sure our national security is being protected. I must say in all honesty that is the view of me and my colleagues.

The answer is we have overlooked it to the detriment of our country. That if we do not reverse the trend toward devoting less and less resources to the overt advancement of our national interests overseas that we are going to be missing the opportunity to protect our national interests, whether they be trade and investment or whether they be private American citizens traveling around the world, whether they be interdicting narcotics at their source, whether they be providing services that are necessary for the rest of the U.S. Government.

As you know the State Department is now less than 20 percent of the Federal establishment overseas. With all this in mind, what we are asking the committee this year of national austerity is two things that you not add to the administration's budget.

First, the committee make no further cuts to the already inadequate budget that has been submitted to you by the administration. Every year the tendency has been to take out just a couple of percentage points, move just a few more people away and the erosion has continued to the point where we simply cannot take any further cuts.

But, Senator, I would also ask your committee, as we are asking the Foreign Relations Committee, to take a look at the whole process for determining our international security and international affairs budget. We believe that because of the concentration now on our programs and policy that the vitality of the Foreign Service as an institution has been ignored for over 20 years and that what is necessary is a comprehensive approach to looking at the vitality of our Foreign Service as an institution, giving people the training they need in languages.

Right now more than 30 percent of posts where it has been determined it is necessary to speak the language are not filled by people with the minimum language requirements for that post. We want the training. We have not been given the opportunity to get it. Our people overseas are finding it increasingly difficult in a hazardous environment to serve.

We have asked for minimal support in order to support them there in terms of security, in terms of sending the people out there are necessary to make the security programs. Last year the Congress, in a major bipartisan effort, passed the New Foreign Service Act which redefined the responsibility of the Foreign Service. It is going to be necessary to build on that.

Senator, thank you very much.

Senator COCHRAN. I share your concern, I might add, about our tendency to want to cut back and reduce in this area. In the domestic policy area it is arguable whether it is appropriate for the Federal Government or the State government or a local government to assume primary responsibility for a function or a program or for the delivery of services; clearly, however, in the area of foreign relations and the functions that come under the jurisdiction of the Department of State, there is no substitute for aggressive, effective, professional Federal Government action.

It is clearly a Federal responsibility and peculiar to the Federal role. So if we cut back here, there is no other entity to take up the slack, whereas if we cut back in the social or domestic program area in one fashion or another, charitable institutions, other institutions, and other governmental entities might be able to take up the slack. So I am worried about that, too.

I just recently made a trip to South America this year, from a very highly inflationed economy in Argentina, where our foreign service personnel are having a very, very difficult time because of financial constraints and problems there. Of course, you highlighted the security aspect. That was brought home to us quite dramatically, wasn't it, during the past several months, when we cut back in that area, too. I think you hit upon something that Congress needs to think very carefully about. Your being here has certainly helped this Senator a little more about it, and I am sure our subcommittee will be sensitive to a lot of the things you discussed. Thank you very much for being here.

Thank you, Mr. Bleakley, for a very fine statement. Your prepared statement will be made a part of the record at this point.

[The statement follows:]

STATEMENT OF KENNETH W. BLEAKLEY

I appreciate the opportunity to appear before you today to discuss the State Department's Budget from the perspective of the 11,000 American men and women serving our country around the world represented by the American Foreign Service Association. We are proud of the job we do under increasingly difficult and dangerous circumstances. Our national security rests on the triad of a first-class military capability, on alert intelligence service and a vigorous expert diplomacy. As diplomats, we are concerned that our ability to protect and advance the national security in the broadest sense has been seriously compromised by an international affairs budget process which no longer adequately serves the national interest.

The Foreign Service of the United States requests two actions from this committee:

1. That you make no further cuts to the inadequate budget for the conduct of our international relations submitted to you by the Administration;

2. That you make clear the sense of the Senate that never again will you accept a foreign affairs budget proposal from the Executive Branch that does not analyze comprehensively the diplomatic resources our country requires to protect itself in an increasingly challenging global environment.

The present Administration did not cause the resource problems now besetting the State Department; nor have they had sufficient time to analyze and repair 20 years of neglect of our first line of defense. We are the only cabinet Department to have actually reduced personnel positions since 1961. Political and economic reporting and analysis positions took the brunt of these cuts being reduced 12% during the past decade alone. All this took place while U.S. global responsibilities, international trade and investment, travel of citizens overseas and of foreigners to our shore and the size of the rest of the U.S. Government were burgeoning.

The results of this neglect are everywhere. From Iran and Afghanistan to Central America and to Ethopia the United States has been caught unawares as we pulled back trained eyes and ears from the front line. Congress was so dissatisfied with State's performance in trade promotion that it allowed the responsibility to pass to another agency which has now begun its own pleas for the resources lone denied our professional trade promoters. The torrent of illegal immigration has become a major problem for the United States as the number of visa applicants has overwhelmed our consular resources. Over 30% of our overseas positions where knowledge of the local language is designated as essential are filled by people who have not received the training to develop minimum professional competence in the language. The Department still lacks any comprehensive career development and training program to maintain and focus the skills of professionals selected in the most competitive examination process in the world.

Now you are presented with a budget which will cut another 304 positions from the Department -- 256 of which "have yet to be determined". At the same time, the Administration declares its intention to fulfill the mandate of the Foreign Service Act of 1980 which requires greater efforts for professional development by providing additional positions. It also says they plan to strengthen our substantive reporting and analysis capability.

Out of which empty pocket will the Department take these positions? Are we now to reduce support services below minimal levels? We are already at the crunch point. Some examples:

-- The Congress has wisely appropriated the funds sought by the Department for protecting our missions overseas. Yet, time after time when our Association inquires about particularly dangerous situations we are told that the Department will get to them as soon as it can -- they do not have the manpower to accelerate the security enhancement program.

How many of our people must be captured or killed before we get the support resources we need? Since 1968 we have lost more Ambassadors than all the Generals killed in Vietnam.

-- Our communications specialists and others providing essential support services overseas are compelled to remain under virtual house arrest in uncompensated standby status to assure round the clock global secure telecommunications capabilities. The Department's promise to the Congress to provide compensation for this service has proven to be a cruel joke which has exacerbated the problem rather than curing it. We are seeking immediate legislative relief.

-- The provisions of the Foreign Service Act of 1980 which were to provide some incentive and reward for service at the most difficult overseas posts remain unimplemented and unfunded. The funds sought by the Department to implement them are grossly inadequate. For example, though more than a dozen of our 213 posts around the world are now considered extremely high risk, funding for danger pay at less than four of them is proposed in the budget before you. This is no surprise to us, our people who were promised minimal monetary incentives for undertaking intensive study in "hard" languages have subsequently been denied compensation "for lack of funds." For similar reasons many of our officers at the most difficult posts no longer receive hardship differentials approved by the Congress.

-- The American flag was lowered for budgetary reasons at ten consular posts around the world during the past 18 months. We are aware that the Soviets maintain an overt presence in at least half of the cities from which we have departed. At how many locations this year will be no longer be able to provide protective service for American travelers and business or to monitor and interdict the flow of narcotics into our country at their source?

Over 20,000 young Americans registered to take the foreign service exam to fill 200 positions last year. Drawing on the tremendous skills of the American people, the professional foreign service will continue to do our best to represent you abroad. But, in addition to the problems outlined above, we lack: sufficient secretarial support (there are over 60 projected vacancies today), mobility (the travel freeze has had devastating effect on our ability to conduct essential business), and administrative support for all government agencies at post (local employee ceiling reductions force Americans abroad to spend much of their time on routine administrative tasks). The country is wasting a valuable national resource in misusing and failing to support its professional foreign service. What is needed is not a massive infusion of capital during a time of national austerity but a reordering of international affairs priorities beyond the confines of OMB's artificially established function 150 in the budget. If the minions of OMB can not take off their green eyeshades long enough to see what their shortsighted approach has done to the U.S. position abroad, then we urge the Congress to do it for them.

We ask you to insist that the Office of Management and Budget balance the cost/benefit ratios of State Department programs against those of other less streamlined Federal agencies. Under present procedures each Embassy, each geographic and functional bureau and the Department as a whole has been forced to weight each program against every other to decide not where cuts can feasibly be made but where they will be least disasterous. Someone needs to as this basic question:

Are we so transfixed by the billions of dollars necessary to improve our military and covert intelligence capabilities that we are ignoring the cost effectiveness of marginal thousands of dollars in overt assessment of how and where to employ our national, political, economic, and Military might and that of our allies?

We, the professional practioners of our nation's diplomacy, are not satisfied with the responses we have been receiving to the issues this question raises. We believe the American people deserve better answers and we urge you to demand a more rational allocation of International affairs resources.

STATEMENT OF THOMAS GITTINS, SECRETARY, THE CONSORTIUM FOR INTERNATIONAL CITIZEN EXCHANGE

Senator COCHRAN. Mr. Thomas Gittins, welcome.

Mr. GITTINS. Mr. Chairman, thank you very much for this opportunity to speak in support of the International Communication Agency and its important relationship with private organizations throughout the United States. I am executive vice president of the United States Sister Cities program, but I am making this statement as a voluntary Secretary of the Consortium for International Citizen Exchange. On behalf of the half million volunteers throughout the United States who carry on the work of the organizations comprising the consortium, I wish to express our gratitude for your willingness to hear our views. You have my written statement so I will depart from that keeping my remarks limited.

The consortium was organized last year as a nonprofit corporation to:

Encourage the exchange of citizens among countries throughout the world for educational, cultural, professional and humanitarian purposes.

Increase public awareness nationally, regionally and locally, of the importance and impact of international adult and youth exchanges: and

Increase citizen involvement in international exchange.

The eight consortium members are:

American Field Service International/Intercultural programs, the Experiment in International Living, The Friendship Force, National Council for International Visitors, Partners of the Americas, People to People International, Sister Cities International, and Youth for Understanding.

The participating organizations operate in 30 States and the District of Columbia, represent approximately 3,800 local units; manage some 100,000 persons; enlist a working volunteer constituency of some half million persons; carry out exchange programs between the United States and some 80 other countries; select citizens to participate in exchange experiences; organize expenditures of about $171 million annually.

The efforts of the many private volunteer international organizations throughout this country are of vital importance to the interests of the United States. It is absolutely imperative that these efforts be supported in a programmatic way and facilitative way and to some extent in terms of funding by the U.S. Government through ICA in its private sector office.

It is in the best interest of this country to have an internationally informed and aware citizenry. That end can best be achieved through private volunteer citizen exchange efforts with Government support as a stimulant and a catalytic agent. It is important the U.S. Government through ICA encourage a free flow of information and experience between the citizens of this country and other countries throughout the world.

As explained by the famed commentator, Edward R. Murrow, "The best form of international communication occurs at 3 feet."

Whether or not they receive Government grants, and two of the organizations do not, is that the functions performed by ICA are of paramount importance to the national interest. We also believe that it is important for volunteers in this country to know that the U.S. Government recognizes the value of the time, the talent, the energy, the commitment and the vast amount of resources that they expend on behalf of the international outreach relations and image of the United States. ICA grants to our organizations meet high leverage criterion, every dollar which is granted releases, through catalytic effect, far more in private resources. In the case of Sister Cities, for example, there are now some 700 U.S. communities affiliated with over 940 "Sister Cities" in 77 countries throughout the world actively involved in a wide range of educational, cultural, youth, business, technical and professional exchanges. During the 1970's, for example, there was a 100-percent increase in the U.S. city involvement in the program.

A 120-percent increase in participation of cities from other countries and a 30-percent increase in the number of countries with cities linked to the United States.

The support the U.S. Sister Cities program within ICA has been critical to that growth. That support on a day to day working basis is essential to private international volunteer programs.

A recent 12-percent sample of Sister Cities showed that over 5,000 exchanges of persons were carried out in that 12-percent group during the previous year, at a modest value of $2,000 per exhange. That is a $10 million return on investment right there.

In the case of Youth for Understanding, for example, the ICA fiscal year 1981 grant of $140,000 was less than 1 percent of YFU's operating revenues. However, the grant was a crucial factor enabling YFU to continue, against the heavy economic odds, to emphasize its valuable, year long international homestay program. Most important is the programmatic pay-off involving over 7,000 long-term student exchanges each year, and in particular, to seek new resources and methods to increase American high school student participation.

A further indication of the information released by the ICA grant to YFU is suggested by the receipt last month of a gift of $750,000 from the Basch Foundation, a private German entity. A further example of the far-reaching impact of ICA support is the Partners of the Americas which devotes all of its activities to the American hemisphere. Its projects are carried out by unique, bilateral partnership which link the resources, people, organizations and institutions of one State in the United States to a country or region in Latin America.

Currently there are partnerships linking 44 U.S. States with 22 countries. As these and other citizen exchange programs grow, it becomes increasingly evident that they represent and essential and cost effective form of citizen diplomacy serving as a vital adjunct to official foreign affairs. They need and should have U.S. Government support.

The time when we could follow George Washington's parting advice to, "Avoid foreign entanglements" is long past, no matter how much they may long to return to a simpler, easier time. We cannot survive in isolation. Our economy, our civilization, our very existence are now part of a woven fabric that blankets the world.

Americans need to know more about the rest of the world or else we will be increasingly at its mercy.

Cooperation between Government and citizens is crucial and the role that the International Communication Agency plays in providing that working relationship between Government and citizens is essential. Thank you very much.

[The statement follows:]

STATEMENT OF THOMAS GITTINS

I am pleased to have this opportunity to speak in support of the International Communication Agency and its important relationship with private organizations throughout the U.S. I am Executive Vice President of the United States Sister Cities Program, but I am making this statement as the voluntary Secretary of the Consortium for International Citizen Exchange. On behalf of the half-million volunteers throughout the United States who carry on the work of the organizations comprising the Consortium for International Citizen Exchange, I wish to express that we are grateful for your willingness to hear our views.

The Consortium was organized last year as a non-profit corporation to:

* Encourage the exchange of citizens among countries throughout the world for educational, cultural, professional and humanitarian purposes:
* Increase public awareness nationally, regionally and locally, of the importance and impact of international adult and youth exchanges: and
* Increase citizen involvement to international exchange.

The eight Consortium members are:

American Field Service International/Intercultural Programs
The Experiment in International Living
The Friendship Force
National Council for International Visitors
Partners of the Americas
People to People International
Sister Cities International
Youth for Understanding

Attached for the record is a brochure which briefly describes these organizations and their programs.

The participating organizations:

* operate in 30 states and the District of Columbia
* represent approximately 5,816 units (committees, chapters, etc.)
* manage some 100,000 exchange of persons annually
* enlist a working volunteer constituency of some one-half million persons
* carry out exchange programs between the U.S. and some 80 other countries
* Select citizens to participate in exchange experiences ranging from 10 days to one year
* organize expenditures of an estimated $171,000,000 annually

* are led by Boards with a total membership of 338 for an average of 42
* employ staff of 596 for an average of 74
* operate budgets ('80) aggregating $74,835,000
* cause expenditures of an estimated $35,000,000 ('80) on exchange of persons travel, and
* represent 206 years of organizational experience and involve some 5,000 American communities.

The Consortium is a pioneering effort. The prevailing pattern in the past was for such organizations to pursue their various closely-related purposes and programs with a minimum of contact and mutual assistance. Now these organizations have discovered the value of cooperation at the community, national and international level.

The statement I wish to make is simple, but extremely critical to all the citizen volunteers we represent and to our programs. Simply put, it is that the efforts of the many private volunteer international exchange organizations throughout this country are of vital importance to the interest of the United States and that it is absolutely imperative that these efforts be supported in a programmatic way, in a facilitative way and, to some extent in terms of funding, by the U.S. government, through the International Communication Agency and its Bureau of Educational and Cultural Affairs with its Private Sector Division.

It is in the best interest of this country to have an internationally informed and aware citizenry. That end can best be achieved through private volunteer citizen exchange efforts with government support as a stimulant and a catalytic agent.

It is important that the U.S. government, through the International Communication Agency, encourage a free flow of information and experience between the citizens of this country and other countries throughout the world. As expressed by the famed, late commentator Edward R. Murrow, "The best form of international communication occurs at three feet."

One of the beliefs shared by all Consortium members, regardless of whether they receive government grants (and two of the organizations do not), is that the functions performed by ICA are of paramount importance to the national interest. Our conviction as to the significance of ICA derives from our own experience as Americans engaged in international citizen exchange.

We have learned that perceptions are crucial in human relationships from the individual level to the international level and that perceptions are shaped by experience. Therefore, the weight of the United States in world affairs is unlikely to be very different from what it is widely perceived to be. To be sure, that weight will be influenced by the actual number of ships, planes and rockets in our arsenal, the actual balance of our international trade, the actual number of our unemployed and the actual degree of coherence of our international policies. But the way these are added up will depend fundamentally on the way people around the world percieve the vitality of our society, the strength of our economy, the cohesion of our political system, the loyalty, creativity and dedication of our citizenry and the competence and representative character of our government. It will be of little use to be able to prove to the world the superiority of our military armament if negative prejudices in such matters condition perceptions so that the United States can engender neither the respect nor the confidence of other peoples and governments.

As we understand it, ICA is the agency of government primarily charged with the task of improving the accuracy of perceptions of the United States in other parts of the World. We wonder whether the size of agency programs is commensurate with the task.

I have not, as yet, referred to that particular section of ICA which provides support to some members of the Consortium. I have not done so because our first priority is to urge that the program of the Agency as a whole be supported at an increased level. If it is, I have no doubt that both Congress and the ICA leadership will recognize the bargain provided by organizations such as those comprising the Consortium which marshal such large private resources in support of the national interest. The ICA grants to our organizations meet a "high leverage" criterion. Every dollar which is granted releases, through catalytic effect, far more in private resources, and tends also to influence the shape and quality of the private programs in support of U.S. purposes.

In the case of Sister Cities, for example, there are now more than 700 U.S. communities affiliated with some 940 "Sister Cities" in 77 countries throughout the world. Through these relationships, cities and their citizens are actively involved in a wide range of educational, cultural, youth, municipal, technical, professional, sports and business exchanges.

It is important to note that in the face of often times overwhelming economic, geopolitical, organizational, programmatic and financial challenges, communities and their citizens are increasing their efforts and competence in providing a bridge of understanding between the United States and other countries.

During the 1970's, for example, there was:

- a 100% increase in U.S. city involvement in the program;
- a 120% increase in participating of cities from other countries;
- and a 30% increase in the number of countries with cities linked to U.S. cities.

This support that the U.S. Sister City Program receives from the Private Sector Office within the International Communication Agency, has been critical to that growth. That support on a day to day working basis is essential to private international volunteer programs.

Let me make it clear that I am not just talking about financial support, although I won't pretend to diminish its importance either. It is important for Volunteers in this country to know that the U.S. government recognizes the importance of the time, the talent, the energy, the commitment, and vast amount of resources that they expend on behalf of the international outreach, relations and image of this country. And, I know, for example, from my own experiences raising money for private international exchange efforts that the interest and involvement of the U.S. government is important to those foundations and corporations that are donating funds to private international efforts.

In the case of Youth for Understanding, for example, the ICA FY 81 grant of $140,000 was less than one percent of YFU's annual operating revenues. However, the grant was a crucial factor, enabling YFU to continue, against heavy economic odds, to emphasize its valuable, year-long international homestay program and, in particular, to seek new resources and methods to increase American high school student participation. In recent meetings in Japan, leaders of both government and private industry, as well as education, enthusiastically attested to the importance to U.S.-Japanese relations of YFU exchanges. In recent years, Japan has evidenced this enthusiasm by an outpouring of financial support far exceeding the contributions received from both official and private sources in the U.S.A. A further indication of the energies released by the ICA grant to Youth for Understanding is suggested by the receipt last month of a gift of $750,000 from the Bosch Foundation, a private German entity. Most important is the programmatic pay-off--over 7,000 long-term student exchanges each year, the bulk of them among families in countries of the highest importance to the United States.

The oldest homestay-based international student exchange organization in the U.S.A., The Experiment in International Living, received a modest grant from ICA last year, less than 1% of its total budget. Due partly to this small grant, the Experiment has been able to initiate several new programs. The first of these is a joint venture with the General Federation of Women's Clubs, whose members and their families will, during this calendar year, host young adults from some 40 nations for three to four week homestays. Another joint venture is with Camp Fire, Inc. (formerly Camp Fire Girls). Through this program, The Experiment will arrange for young women representing 20 nations to come to the United States for three week homestays, followed by attendance at a Campfire Horizons Conference in Colorado which will be devoted in part, to a discussion of current international issues of worldwide importance. A third example is a program developed with the International Division of the Boy Scouts of America. This year, young men from many nations will come to the United States to serve as international camp counselors in regional scout camps, spending their weekends with American families.

Another example of an important program being strengthened by an ICA grant can be found at AFS. The small grant which ICA provides to American Field Service has helped that organization underwrite the expenses of bringing to the United States young men and women from 30 Third World countries. These young people enroll in American schools, live with American families, and come to a better understanding of the strengths of American society.

A further example of the far reaching impact of ICA support, is the Partners of the Americas, which devotes all of its activities to the American hemisphere, including the important area of Central America. Its projects are carried out by unique, bi-lateral partnership which link the resources, people, organizations and institutions of one state in the United States with a country or region in Latin America. Currently there are partnerships linking 44 U.S. states with 22 countries. The Partners program receives both public and private money, including financial assistance from ICA. Because the projects of the Partners are carried out by volunteers, there is a high multiplier factor in effect.

As these and other citizen exchange programs grow, it becomes increasingly evident that they represent an essential and cost effective form of citizen diplomacy serving as a vital adjunct to official foreign affairs. They need and should have U.S. government support.

Returning to the question of the adequacy of the ICA budget as a whole, in relation to the national interest, let us consider quickly two comparative points:

1. While we, Americans feel that we must match the Soviet military build-up, we have not given equal serious thought to matching the resources which the Soviets put into waging ideological and political warfare around the world. An article in the March 9 issue of Time Magazine cites a CIA estimate that the Soviet Union spends $3.3 billion annually on various propaganda activities. The entire budget of the ICA is, in contrast, only $448 million.
2. The United States apparently considers international communication via information programs and cultural exchange to be far less important, relatively speaking, than do our friends in NATO. West Germany alone, in 1977, spent $471.2 million on information programs and cultural exchange.

The world is, as the Disney song tells us, "a small place after all." We live on a planet increasingly bound together by transportation and communication technology. Events now unfold for us with astonishing rapidity: a Pope dies, another is elected, and within minutes the news reaches every part of the globe. We follow the events in Iran or the El Salvador crisis from our living rooms and watch for signs of change. We learn of problems in Afghanistan before we can locate that nation on the map, and we follow daily the lives of workers in Poland. No country in the world is more than hours away by jet from our own.

And, it becomes more complicated by the day. We are only just beginning to recognize how dependent the nations of the world are on one another, how much we share each other's problems and how much we affect each other - much more deeply than ever before. The time when we could follow George Washington's parting advice to "avoid foreign entanglements" is long past....no matter how much we may long to return to a simpler, easier time. We cannot survive in isolation. Our economy, our civilization, our very existence are now part of a woven fabric that blankets the world.

Americans need to know more about the rest of the world or else we will be increasingly at its mercy.

Cooperation between government and citizens is crucial and the role that the International Communication Agency plays in providing that working relationship between government and citizens is essential.

Thank you again, Mr. Chairman, for this opportunity to express these views.

Senator COCHRAN. Thank you for the good statement. I just happen to be here on a good day, I guess. My favorite subjects are being discussed. Not only was I a recipient of a foundation fellowship for study for a year abroad when I was in college, but I helped organize and start an American Field Service Chapter in Jackson, Miss., and organized regional gatherings of AFS students in our State. I feel very strongly that many of these programs that you are discussing are extremely important, not only for the United States but for all the world.

I appreciate the manner in which you have discussed a number of these programs and, in fact, you are telling us about the global connection, the consortium that has been developed that is 1 year old.

How could you assess its effectiveness in coordinating these different kinds of programs that we have throughout the country now?

Mr. GITTINS. Incredible.

Senator COCHRAN. It is a worthwhile endeavor?

Mr. GITTINS. The fact we are together is unique in itself. It has been long in coming, and it is the first time the organizations have, in fact, even met together. So we have reduced a lot of competitiveness among ourselves. Some of the organizations are directly competitive. Nonetheless, there is a need to work together in our activities and coordinate our resources.

Senator COCHRAN. You mention there were two of the groups that do not receive any Federal funds.

Mr. GITTINS. That is correct.

Senator COCHRAN. None at all. And you identify a grant or two that was made by ICA to one or the other of the organizations. Do all of the organizations which are supported by the Federal Government receive assistance through ICA?

Mr. GITTINS. Six of the organizations receive assistance through ICA. I believe three of the organizations also have some technical programs and developmental assistance with AID.

Senator COCHRAN. That was going to be my other question, what other agencies of the Federal Government financially assist these members of the consortium?

Mr. GITTINS. Those are the two. The rest of the funds is from private foundations, corporations. In our case, for example, we are a national association. We also have a membership structure whereby U.S. cities are members of our dues paying organization.

Senator COCHRAN. I am interested in working with someone, maybe you, in coming up with a legislative program that will help stimulate the exchange of students with the United States. This would mainly involve trying to attract at the graduate level more students to U.S. universities in specialized professional areas. One fact has been brought home to me this year, that is the Eastern European countries, and the Soviet Union in particular, are attracting more and more students in the professional areas, such as agriculture. After training in those universities and becoming acquainted with the economy and way of doing business in those nations, these people go back home and, in addition to prefering equipment and specs from those countries, they also maintain connections developed during that course of study. We are finding a lot of trade and other benefits coming to those host countries as a result of those educational exchange efforts.

Just looking at it for a selfish reason, that is one of the things that can happen if we neglect that area. I think we are seeing it occur in country after country around the world. We used to be looked at as a place where the young students would go for specialized training. We are not the only country now that is looked to in that respect.

I notice that our next witnesses are Fathers Collins and Bradley to talk about a pilot international student exchange program. Before recognizing you, let me state for the record that your entire statement will be made a part of the record.

Mr. GITTINS. Thank you, and I will follow up with you, Mr. Chairman, if I may. Rosemary Lyons is executive director of our consortium. I believe we would like to work very effectively with you.

Senator COCHRAN. We may not need a new legislative program, but I have members of my staff who are working to explore possibilities in this area. I think we need to concentrate some attention there. If it is just funding that we need, whatever it is, working in a closer relationship with organizations such as yours may be an answer or a partial answer. But it certainly needs exploring, in my opinion.

Mr. GITTINS. Thank you. Is there someone we could follow up with?

Senator COCHRAN. Yes, me. There are two or three people on the staff who are working on it right now.

STATEMENTS OF:

FATHER T. BYRON COLLINS, S.J., SPECIAL ASSISTANT FOR FEDERAL RELATIONS

FATHER HAROLD M. BRADLEY, S.J., DIRECTOR OF INTERNATIONAL PROGRAMS, GEORGETOWN UNIVERSITY

Senator COCHRAN. Father Collins, welcome.

Father COLLINS. Senator, you couldn't have given a better introduction if I had written it myself. It is because of the support of this committee there is an organization and program called international exchange student program for which we are speaking.

This is the fifth year of the pilot. It was started by the joint sponsorship of Senator Weicker and Senator Hollings. Its purpose is to have the universities in this country work with universities in other countries who have student exchanges. We have been successful. Father Bradley is the one who runs the program, together with our executive director who is with us. The purpose is to get the universities together. We have done this. The network of exchange of students—it is a very simple idea. The students of Mississippi——

Senator COCHRAN. I see the University of Mississippi here.

Father COLLINS. Students of the University of Mississippi are going to go to one of the 80 countries listed abroad and they need to be in the process of selection.

They will exchange places with students from abroad. It won't cost them any money. That is the advantage. What it costs them to go to the University of Mississippi is what it costs them to go to the University of Paris because the universities make that arrangement.

What we are asking the committee for is a little administration, a specific dollar sign of $600,000. The committee has been very sympathetic toward our request in the past. I will give it to Father Bradley.

Father **Bradley**. You already said what needs to be said.

Senator **Cochran**. Father Bradley, did he do it all?

Father **Bradley**. He did it all, except I think it would be interesting for you to know out of the first five universities in the United States that because it—out of the first seven—Mississippi is one of the first seven. We are now up to 80 universities in the United States that see the value of this kind of thing. Very basically the idea is to set up a network of universities here and abroad who will exchange students that have paid all of the costs of their education in their own university. However, you can arrange it to go to the University of Mississippi. Ideally we say you ought to be able to study where you have the proper language ability. There is a list of the people—two people who want to go to Germany means their language is ready to study in Germany in German; two to France. We have one to study under Cardiff in Wales.

Father **Collins**. To answer your fundamental question, in terms of legislation, the existing law provides the legislation for this exchange. Then second, in terms of the growth of this, our idea is to get the Federal Government seed money. We need a little more seed money.

We have more students in our program than the Fulbright program. Fulbright has about $34 million in their funding.

Senator **Cochran**. And the travel costs, I suppose, are included in this amount.

Father **Bradley**. They are supposed to come up with that on their own.

Father **Collins**. We help them do that. Part of the university's problem is to arrange for the students in need of travel to get that. We use the full resources of our university. Since you brought it up, it is a good buy for the Federal Government. For every $500 this committee puts in, the universities give back to you $20,000. We take the responsibility for raising $20,000 and then in the following years, we are asking for less.

Senator **Cochran**. I am certainly happy to learn about this program and the success it has had in its early life.

Father **Bradley**. There were a lot of skeptics when we first proposed this. I would like to say not in the universities. The people in the universities bought the idea immediately.

Senator **Cochran**. You are very kind to take time to come by and let us have the benefit of your thoughts and experience on this. This will be very helpful to the committee when it comes time to get down to decisionmaking. Thank you for being here. We appreciate all of your contributions.

[The statement follows:]

STATEMENT OF FATHERS T. BYRON COLLINS AND HAROLD BRADLEY

Mr. Chairman and members of the committee, we are Fathers T. Byron Collins, S.J., assistant to the president of Georgetown University and Harold Bradley, S.J., director of international programs at Georgetown University.

We are here to present the final stage of the pilot international student exchange program that has been encouraged by this committee for the last 3 years.

This program arranges through universities in other countries, and universities in this country, to have students exchange places for the purpose of studying abroad. These students are both graduate and undergraduate students. Each participating university arranges that the cost of education and living are provided for each student in the program, and then, ISEP arranges for the student exchange. (Attachment 1)

This program has grown from 1 to more than 80 U.S. colleges and universities and from 8 to more than 100 non-U.S. colleges and universities. (Attachment 2) The unit student cost has dropped from $2,000 to next year's cost of $500 per student.

This will be the last year of this pilot program. The program will then be carried on by a nonprofit organization composed up of the participating universities.

Under the present program, next year each university provides $8,000 to $9,000 for each student and the grant will provide $500 for the exchange costs supplied from the ICA grant.

In the succeeding years, the participating universities will provide 80 percent of the central exchange costs, dropping the Federal participation even further, to $180 per student.

We request the committee to support $600,000 for this final year (attachment 3), to allow for the essential costs to put this program in full operation and provide for 1,200 student exchanges between more than 100 U.S. institutions and more than 160 institutions abroad. This will enable the program to have enough institutions to be a going concern and aim toward carrying most of the exchange costs.

We point out that we had estimated the costs of this year to be in excess of $1 million but because the institutions are already sharing in the costs of administration, we limit the request to $600,000.

[ATTACHMENT 1]

EXCERPT FROM USICA STAFF PAPER ON THE INTERNATIONAL STUDENT EXCHANGE PROGRAM—GEORGETOWN UNIVERSITY

The international student exchange program (ISEP), currently conducted by Georgetown University, is a USICA-funded mechanism for arranging one-for-one student exchanges between cooperating United States and non-U.S. colleges and universities. Except for travel, costs to the students are the same as if they had remained at their home universities. Grants to initiate and continue support to Georgetown University for this experiment have been awarded since 1979 at the instruction of the Congress. On the basis of established criteria, ISEP selects participating colleges and universities, collects and shares information among those institutions, and determines the final selection and placement of students. ISEP prepares annual budget proposals to cover the costs of the ISEP central administrative mechanism, convenes an Advisory Board which meets quarterly, and prepares and submits required reports.

From a small base of some 30 students in its first year of operation, 1979–80, the number of students multiply in each following year so that 1,500 exchanges are projected for 1983–84. The number of participating institutions similarly increases from the base of one United States and eight European universities. The first USICA grant was $100,000, and the current budget request for fiscal year 1982 is $600,000 for the final year of the pilot program.

Two unique concepts are being tested by ISEP: the feasibility of a network among institutions to operate one-for-one exchanges, and the opening up of opportunities for American undergraduates to study the standard curricula of non-U.S. universities. Possible results of the experiment include one or several workable consortia arrangements for head-for-head exchanges, with financial support coming from the member institutions and State as well as Federal governments, or the absorption of ISEP into the Fulbright program. Another result could be the facilitation of many more Americans from varied economic backgrounds entering foreign universities as regularly enrolled students. Success will depend upon careful management of the several key ingredients of this complex effort.

[ATTACHMENT 2]

INTERNATIONAL STUDENT EXCHANGE PROGRAM—ACTIVITY UNDERTAKEN/PROJECTED UNDER GRANT—FISCAL YEARS 1979–82

Fiscal year	U.S. Government funds	Academic year	Number of students		Number of institutions		
			From U.S.	To U.S.	U.S.	Abroad	(No. of countries)
1979	$100,000	1979–80	13	14	1	8	(6)
1980	200,000	1980–81	65	63	8	22	(14)
1981	500,000	1981–82	[1]300	[1]300	80	[1]100	(24)
1982[1]	600,000	1982–83	600	600	100	160	(69)

[1] Projected.

[ATTACHMENT 3]

International student exchange program budget, fiscal year 1982

[Based on the exchange of 1,200 students]

Salaries	$275,000
Travel and per diem	85,000
Supplies	8,00
Other direct	132,000
Associated costs	100,000
Total	600,000

Institutions outside the United States

Algeria	3
Argentina	1
Australia	13
Austria	3
Belgium	4
Brazil	5
Cameroon	1
Canada (Multi through Higher Education Nat'l Organization)	
Chile	1
Colombia	3
Costa Rica	5
Denmark	....
Ecuador	1
Egypt	1
England	39
Finland	3
France	16
Germany	12
Ghana	1
Hong Kong	3
India	....
Indonesia	....
Republic of Ireland	2
Israel	2
Italy	1
Ivory Coast	1
Jamaica	1
Japan	8
Jordan	1
Kenya	1
Korea	1
Kuwait	1
Lebanon	2
Luxembourg	1
Madagascar	1
Mexico	5
Malaysia	2
Nepal	1
The Netherlands	2
New Zealand	6
Nigeria	4
People's Republic of China	....
Peru	1
Philippines	5
Poland	1
Portugal	1
Romania	1
Scotland	5
Senegal	1
Sierra Leone	1
Singapore	1
Spain	1
Sweden	....
Switzerland	8
Taiwan	....
Thailand	1
Tunisia	1
Turkey	3
United Arab Emirates	1
Venezuela	3
Wales	3
Total institutions outside United States	196

STATEMENT OF JAMES R. GORSON, DIRECTOR OF FACILITATION, AIR TRANSPORT ASSOCIATION OF AMERICA

Senator COCHRAN. Our fifth panel will be discussing programs in the Department of Justice. We have with us James R. Gorson, Director of Facilitation of the Air Transportation Association of America; Roger Conner, Executive Director of the Federation for American Immigration Reform; and Susan J. Kokinda, the Washington Represenative of the National Democratic Policy Committee.

If all of you will come forward, we will proceed with the panel. We will ask James Gorson to go first.

Mr. GORSON. Thank you, Mr. Chairman. In the interest of conserving time, I will summarize. My name is James R. Gorson. I am director of the Facilitation of the Air Transport Association, which represents virtually all of the scheduled airlines in the United States. With me in the room is Mrs. Elizabeth Monroe.

Senator COCHRAN. And a native of Mississippi.

Mr. GORSON. And a native of Mississippi.

Senator COCHRAN. You are very clever.

Mr. GORSON. We appreciate the opportunity to appear before the subcommittee to discuss U.S. Immigration Service inspection requirements as they affect international air commerce. Our primary interest is in seeking to assure that the responsibilities of the Immigration Service, and the means by which they are carried out, do not nullify or erode the benefits of air transportation, benefits which are wholly dependent on the speed, efficiency, and reliability of airline service.

Our concern is that current and future appropriations for immigration staffing at our international airports will cause serious air service disruptions and extensive public criticism, unless resource adjustments are made and ways are found to reduce inspection workload through simplification and modernization of procedures.

Senator COCHRAN. What does that mean, really?

Mr. GORSON. That simply means we would propose a concept which was assigned by the General Accounting Office which would not only reduce the inspection requirements of immigration but also customs yet would facilitate entrance into this country.

Senator COCHRAN. Does that mean you need more people there?

Mr. GORSON. We can do with less people with this concept. I will outline that in further detail.

This concern is intensified by the fact that current inspector staffing is well below the level needed today; that extensive inspection delays and public inconvenience have occurred.

I would like to submit for the record, if I may, Senator, a memorandum from the manager of the terminal operations in Miami relative to a situation which happened there last month.

Senator COCHRAN. Without objection, it will be made a part of the record at this point.

[The statement follows:]

MEMORANDUM FROM ROBERT DIAZ, JR., MANAGER-TERMINAL OPERATIONS, MIAMI INTERNATIONAL AIRPORT

Last Saturday we experienced one of the worst situations in our F.I.S. system ever. Severe holding occurred in the Satellite Arrivals Building, due to extreme congestion in the understaffed INS room, for four consecutive hours from 3:00 p.m. straight through until 7:00 p.m. Up to 2,000 passengers were held in the Satellite for most of the afternoon. Two ladies suffered angina attacks in the Satellite Building, due to standing from one hour to two hours in the extreme heat and crowded conditions. County paramedics were called to the Satellite, and three paramedics then remained in the Satellite for the rest of the afternoon, treating passengers who were now fainting from long periods of standing in the heat and crowded conditions.

By mid-afternoon the delayed passengers in the Satellite Building had become so angry and upset that five County police officers had to be called to prevent the crowds of passengers from rushing the transit station. The five County police officers also then remained in the Satellite to assist in crowd control. By this time, six Aviation Department International Operations multilingual staff also were assisting in crowd control in the Satellite and in the INS room.

Later during the afternoon INS completely closed down the Immigration lines and advised the furious delayed passengers, who had now reached the jammed INS room, that INS processing would not re-start until the crowd calmed down.

Between 3:00 p.m. and 4:00 p.m., ten to twelve of the 38 INS inspection booths were manned, which provided a passenger processing rate of 600 to 750 passengers per hour (10 to 12 per minute). During this period, passengers were arriving at approximately 2,400 passengers per hour (60 per minute) - or five to six times the available INS processing rate. A large backlog of passengers rapidly built up in the INS room, and holding in the Satellite immediately became necessary. From 4:00 p.m. until 6:00 p.m., twelve to sixteen of the 38 INS inspection booths were manned, which provided a passenger processing rate of 750 to 1,000 passengers per hour (12 to 16 per minute). During this period, passengers were still arriving at 1,500 to 2,000 passengers per hour (30 to 35 per minute) - or twice the available INS processing rate. The approximately 20 Customs Inspectors on duty between 1500 and 1800 could always handle the flow from INS.

Passenger processing times for passengers arriving during the complete seven-hour period 1:00 p.m. to 8:00 p.m. averaged 80 minutes (1 hour 20 minutes). Passenger processing times for passengers arriving during the four-hour period 3:00 p.m. to 7:00 p.m. averaged 93 minutes (1 hour 33 minutes), with 30% of passengers taking over two hours, and large numbers of passengers taking over two and a half hours. A total of 13,300 passengers and crew were handled on Saturday, February 28th (June 1980 levels).

All DCAD and Police Department staff handled themselves in a responsible and professional manner under extraordinary conditions, which continued for four consecutive hours. The International arrival schedules for the period 3:00 p.m. to 6:00 p.m. are shown in Exhibit 1 attached.

EXHIBIT 1

FLIGHT	FROM	ARRIVAL TIME	PASSENGERS	
AMERICAN 652	ARUBA	1505	74	
BRANIFF 908	BOGOTA	1505	157	
PAN AM 99	LONDON	1507	283	
EASTERN 948	SANTO DOMINGO	1507	195	
PAN AM 81	PARIS	1510	200	
ALM 975	CURACAO	1516	89	
AIR FLORIDA 801	ZURICH	1517	380	
AIR FLORIDA 173	COSTA RICA	1523	128	
CONDOR 3292	FRANKFURT	1527	182	
PAN AM 442	CARACAS	1531	404	
AIR PANAMA 702	PANAMA	1544	119	
BRANIFF 976	PANAMA	1544	132	= 2,343 pax(1) in 40 minutes (58 per minute)
MEXICANA 309	CANCUN	1609	140	
AIR FLORIDA 8212	N.A.	1630	100	
EASTERN 956	COZUMEL	1640	112	
PAN AM 448	CARACAS	1641	N.A. (2)	
AIR FLORIDA 109	N.A.	1644	125	
LAKER 061	MANCHESTER	1644	345	
REPUBLIC 446	GRAND CAYMAN	1650	130	
BRITISH AIRWAYS 294	LONDON	1651	418	
JAMAICA 025	JAMAICA	1659	95	= 1,865 pax in 50 minutes (37 per minute)

(1) Add 8% to 10% for crews.

(2) Could not reach crew flight information desk due to crowds in Satellite. Estimate 400 pax and crew.

FLIGHT	FROM	ARRIVAL TIME	PASSENGERS
CAYMAN 046	GRAND CAYMAN	1701	99
AIR FLORIDA 470	MARSH HARBOR (BAH)	1716	41
AERO MEXICO 412	MERIDA	1720	91
AIR FLORIDA 683	HAITI	1721	100
AIR FLORIDA 141	JAMAICA	1721	41
EASTERN 966	HAITI	1723	227
EASTERN 970	JAMAICA	1725	177
FAUCETT 290	IQUITOS	1735	182
ALM 971	ARUBA	1739	46
LUFTHANSA 436	FRANKFURT	1754	325

= 1,329 pax in 53 minutes
= 22 pax per minute

Mr. GORSON. Thank you, sir. It outlines the fact several weeks ago they experienced one of the worst situations in the Federal inspection system ever. Severe holding occurred due to extreme congestion for 4 consecutive hours from 3 p.m. to 7 p.m. Up to 2,000 passengers were held in the building for most of the afternoon. Two ladies suffered angina attacks in the building due to long standing in the extreme heat and crowded conditions.

County paramedics were called in. Three paramedics then remained for the rest of the afternoon treating passengers who were now fainting because of long periods of standing and crowded conditions.

Later in the afternoon, INS completely closed down the immigration lines and advised the furious delayed passengers who had now reached the jammed INS room that INS processing would not restart until the crowd calmed down.

I hope, Senator Cochran, when you return home to Mississippi from South America you do not face a similar experience.

Senator COCHRAN. We don't have any international ports of entry that I know about.

Mr. GORSON. The airlines fully agree that determined efforts are necessary to reduce the growth of Federal spending in order to spur economic recovery and expansion. The airlines also agree that all parts of the economy must avoid requesting special treatment. We do not seek special treatment. We do not consider an effort to assure the availability of resources adequate to administer efficiently a law enacted for the public good to be inconsistent with that essential national economic objective. The airlines, both United States and foreign flag, last year operated 440,000 flights to and from the United States, transporting over 50 million passengers. Air travel to and from the United States by foreign visitors increased by 13 percent last year, while the rest of the national economy generally declined, and continued growth is expected.

In 1980, visitors from abroad contributed at least $12 billion to the U.S. economy and generated over $1 billion in Federal, State, and local tax revenues.

In the light of the objectives and achievements of these public policies, and the principles underlying the immigration law and its administration, it is difficult for us to understand the inspector staffing deficiency we now face.

As reflected in the attachment to my statement, 334 additional immigration inspectors are needed now, today, at U.S. international airports to process international air commerce on a reasonably efficient basis under current inspection practices. This number, in our opinion is a conservative estimate and one that cannot be reduced significantly without substantially altering immigration inspection requirements. The increased inspector staffing needs can be provided by direct appropriations, or by a mandated reallocation of resources from within the Immigration Service or by some combination of the two approaches.

While significant immigration inspector workload reductions may not be possible in the absence of major changes in our basic immigration policy, opportunities exist for inspection simplification by administrative action.

This is what I referred to earlier, Mr. Chairman. I would like to review briefly one such opportunity. That is the General Accounting Office one-stop inspection proposal. It can be almost immediately at international airports across the United States with little or no facility modifications and with minimum associated costs for cross-training of immigration and customs inspectors.

If Mrs. Monroe would hold up the schematic, perhaps this would be useful in understanding this concept.

Senator COCHRAN. This is a chart that is in your statement.

Mr. GORSON. That is a blownup chart. All arriving passengers would go to primary inspection lines for inspection. Their handbag only, hand-carried bag only, would be inspected. This satisfies agriculture requirements because that is where agriculture finds most prohibited articles to be found, in the hand carriage baggage. Passenger baggage will be stamped and all passengers would go to the parasols, pick up their baggage, and leave except for very few who have inspection problems, immigration problems or agriculture problems. They would be referred to customs secondary for their continued inspection.

This consolidates immigration and customs inspectors into one primary line and reduces the overall total and increases productivity. We commend this to your attention.

Senator COCHRAN. Have you taken this up with the Immigration Service?

Mr. GORSON. Yes, Immigration agrees with us. We would hope Agriculture and Customs would.

Senator COCHRAN. You haven't taken it up with them, though, yet?

Mr. GORSON. They are reviewing different concepts. This is one. This needs a little shove, Senator, and it would be helpful for this committee to do it.

Senator COCHRAN. Bring it to the attention of the Agriculture people and Customs people.

Mr. GORSON. I received a wire today from the Miami Chamber of Commerce indicating that the Miami Airport is willing to have this in place July 1; if they have the approval, they go ahead. I would like to submit that for the record, sir.

Senator COCHRAN. We will make that a part of the record at this point.

[The information follows:]

MAILGRAM FROM H. V. GREEN, PRESIDENT, GREATER MIAMI CHAMBER OF COMMERCE

APRIL 20, 1981.

JAMES GORSON,
Director, Facilitation, Air Transport Association,
Washington, D.C.

RESOLUTION

Whereas, the Greater Miami Chamber of Commerce, acting through its executive committee, recognizes that a critical stiuation exist at Miami International Airport with regard to international arrivals and subsequent custom and immigration inspections; and

Whereas, the GAO one stop configuration (see explanation below) is a very positive step toward addressing the joint needs of budgetary restraint and reasonable processing times for the ever growing numbers of foreign visitors; and

Whereas, the GAO one stop configuration will not adversely affect detection of narcotics and, in fact, enforces the law better than the existing two-stop approach; and

Whereas, the Dade County Aviation Department has agreed to modify existing inspection stations to conform to the GAO one stop configuration procedures; Now therefore, be it

Resolved, That the Greater Miami Chamber of Commerce, acting through its executive committee, thus hereby support the selection of Miami International Airport as a test site for a trial evaluation program of the GAO one stop configuration, and recommends an implementation date of July 1, 1981.

(The GAO one stop configuration enables passengers and their hand luggage to obtain immigration and customs clearance at the same station, passengers who require additional scrutiny will be asked to obtain all their luggage and proceed to another area, passengers who successfully complete the first inspection will be permitted to obtain their luggage and depart the terminal.)

Mr. GORSON. I think specifically if this committee can direct ealier consideration of the GAO one-stop, it can be put in effect across the country. Thank you, sir.

[The statement follows:]

STATEMENT OF JAMES R. GORSON

My name is James R. Gorson. I am Director of Facilitation of the Air Transport Association, which represents virtually all of the scheduled airlines of the United States. Among our members are 19 U.S.-flag airlines that provide regularly scheduled air service between the United States and over 70 foreign countries.

We appreciate the opportunity to appear before the Subcommittee to discuss U. S. Immigration Service inspection requirements as they affect international air commerce. We will also comment on the level of resources necessary to meet those requirements under current inspection practices without causing intolerable delays and public confusion, as well as alternatives available to minimize resource demands and growing inspection workload.

Our primary interest is in seeking to assure that the responsibilities of the Immigration Service, and the means by which they are carried out, do not nullify or erode the benefits of air transportation -- benefits which are wholly dependent on the speed, efficiency and reliability of airline service. Our concern is that current and future appropriations for immigration staffing at our international airports will cause serious air service disruptions, and extensive public criticism, unless resource adjustments are made, and ways are found to reduce inspection workload through simplification.

This concern is intensified by the fact that current inspector staffing is well below the level needed today; that extensive inspection delays and public inconvenience have occurred; that long-standing inspection practices have not been changed significantly; and that pending appropriations proposals hold little promise for the resource adjustments and procedural changes which are required.

Immigration Responsibilities and the Budget

The current responsibilities of the Immigration Service were established by the Immigration and Nationality Act of 1952. Before discussing Immigration staffing requirements in terms of currently applicable inspection practices, it may be well to review briefly the principles underlying that statute and related federal budget principles.

The 1952 Immigration law represented a comprehensive effort to develop a revised immigration, naturalization and nationality code, to modernize and codify various immigration policies adopted over many prior years, and to establish long term principles on the admissibility and exclusion of foreign nationals. In the process of doing this, the legislative language became quite precise in specifying basic entry and documentation requirements applicable to citizens and aliens, as well as basic inspection requirements affecting the process followed at airports of entry today. As in the case of earlier immigration policy, the 1952 law was enacted to protect the national security and the broad public interest.

The 1952 Immigration law provided no special direct or indirect benefits to the airlines, or to airline customers as a class. Nor was the law intended to promote or support air transportation, or to make it a better, or more salable product. As a matter of fact, putting public policy objectives aside, the requirements of the law hinder the provision of efficient airline service and the selling of airtravel to this country. In short, the purpose of the Immigration Act was, and apparently remains, to protect the broad public interest. Its efficient enforcement is a federal, not a private, obligation. This obligation simply cannot be transferred -- either directly or indirectly, in whole or in part -- to airlines and airline customers because of federal budget considerations or shifting priorities.

The airlines fully agree that determined efforts are necessary to reduce the growth of federal spending in order to spur economic recovery and expansion. The airlines also agree that all parts of the economy must avoid requesting special treatment. We do not seek special treatment. We do not consider an effort to assure the availability of resources adequate to administer efficiently a law enacted for the public good to be inconsistent with that essential national economic objective.

Nor is it inconsistent with other Congressionally mandated public policies designed to promote travel to this country by visitors from abroad, and to stimulate airline competition in the international marketplace. The International Travel Act of 1961 calls for extensive public and private efforts, including the expenditure of public funds, to increase U. S. destination travel in view of its social and economic values. The 1961 Act also calls for the removal of artificial travel barriers, including cumbersome customs and immigration requirements. The International Air Transportation Competition Act of 1980 calls for increased competitive air service between the United States and other countries. As a matter of national policy, more airlines are being urged to offer more service, carrying more passengers, from more points abroad, to more U. S. airports of entry.

Under these policies, the airlines, both U. S. and foreign flag, operated over 440,000 flights to and from the United States last year, transporting over 50 million passengers. Air travel to and from the United States by foreign visitors increased by 13 percent last year -- while the rest of the national economy generally declined -- and continued growth is expected. In 1980, visitors from abroad contributed an estimated $12 billion to the U. S. economy, and generated over $1 billion in federal, state and local tax revenues.

In the light of the objectives and achievements of these public policies, and the principles underlying the Immigration law and its administration, it is diffcult to understand the Immigration inspector staffing deficiency we now face.

Immigration Inspector Staffing

We have suggested a number of immigration inspection simplification measures through administrative action. Some have been adopted; others have not. While further simplification by administrative action is possible, those provisions of the Immigration Act of 1952 specifying detailed entry and inspection requirements are not conducive to the type of changes which would be necessary to reduce inspection workload in a significant way. And as members of this Subcommittee know, amendments to the basic provisions of the Immigration law do not come easily or swiftly. For example, we have urged for many years an easing of visitor documentation requirements and changes with respect to needless penalties imposed on transportation companies.

In the meantime, Immigration inspector staffing has not kept pace with the growth of air travel and continues to be seriously inadequate at airports where international air travelers enter the United States. There are severe bottlenecks in processing international travelers through immigration formalities at U. S. airports of entry, and at preclearance airports in Canada, Bermuda and the Bahamas. Lengthy delays have been experienced at such airports as Atlanta, Chicago, Honolulu, Houston, Los Angeles, Miami, Montreal, New York and San Francisco.

This problem must not be allowed to continue. It is not a good way of conducting the business of the government. It is counterproductive to the effort to welcome visitors from abroad. It causes public inconvenience and delay, and generates widespread public indignation. It makes the business of international air transportation less productive and efficient, and increases its cost to the public.

As reflected in the attachment to this statement, 334 additional Immigration inspectors are needed now -- today -- at U. S. international airports to process international air commerce on a reasonably efficient basis under current inspection practices. This estimate is based on airline industry analyses of inspection workload at the various airports, and on consultations with the Immigration Service. It is, in our opinion, a conservative estimate, and one that cannot be reduced significantly without substantially altering Immigration inspection requirements. The increased inspector staffing needs can be provided by direct appropriations, or by a mandated reallocation of resources from within the Immigration Service, or by some combination of the two approaches.

The Immigration inspector staffing dilemma is brought into sharp focus by current federal employment resource planning and appropriations proposals. We understand that, despite increased international air travel, the already under-manned Immigration inspector staff assigned to airports of entry is about to be reduced. We are informed that at least 35 of today's airport inspectors will be cut immediately, and that the *number of* airport inspectors will be further reduced in October. Added to the disruption and delay caused by the present shortage of airport inspectors, these reductions will result in airport inspection chaos, and may well force air service interruptions. Congressional action is urgently needed to prevent these unfortunate consequences, and to assure that the federal government's responsibility for carrying out applicable Immigration inspection requirements is efficiently fulfilled.

Alternatives to Minimize Growing Resource Demands

While significant Immigration inspector workload reductions may not be possible in the absence of major changes in our basic Immigration policy, opportunities exist for inspection simplification by administrative action. These opportunities include:

1) Adoption and immediate implementation at international airports around the country of the "one stop" inspection procedure as proposed by the Comptroller General of the United States in August 1979.
2) Extension of preclearance -- the inspection of passengers prior to departure in the foreign country -- to more locations abroad;
3) Consolidation of arrival and departure information required by Immigration and Customs;
4) Introduction of a machine readable U. S. passport system at airports of entry; and
5) Consolidation of the several inspection functions required for the entry of travelers into this country.

These simplification measures will not eliminate the need for Immigration inspector staff resource adjustments as air traffic continues to grow. However, they could moderate such resource demands in the future, and increase inspector productivity, without compromising Immigration requirements or the inspection process.

The General Accounting Office Proposal

The General Accounting Office "one-stop" inspection proposal mentioned previously can be implemented almost immediately at international airports across the United States with little or no facility modifications and with minimum associated costs for cross-training of immigration and customs inspectors and relocation and wiring of Treasury Enforcement Communications Systems (TECS) apparatus. Attached to our statement is a schematic of the GAO "one-stop" proposal and a brief explanation on how it works. The support of the subcommittee is needed to effect prompt and favorable consideration of the GAO "one-stop" configuration. In this regard, one U. S. international airport, Miami, has stated it is "prepared and able to dedicate necessary funds... to accomplish any changes needed" now and will put in a 24-hour, 7-day week construction effort to do so.

Conclusion

The basic responsibilities of the U. S. Immigration Service have been established by the Congress. Resulting inspection requirements apparently are considered necessary in the broad national interest. They do not uniquely benefit airlines or airline customers. As long as the national interest continues to require the imposition of an inspection process on international air commerce there must be a concomitant obligation to provide the necessary means for its efficient accomplishment.

Immigration inspector staffing at U. S. international and preclearance airports is substantially below the level needed today for the prescribed air commerce inspection process. Unreasonable delays and public inconvenience have been the consequence. Unless prompt steps are taken to assure adequate Immigration inspector resources, these problems will worsen severely. While simplification measures may reduce the growth of resource needs, they will not significantly reduce inspector staffing requirements in the absence of a major change in basic customs policy.

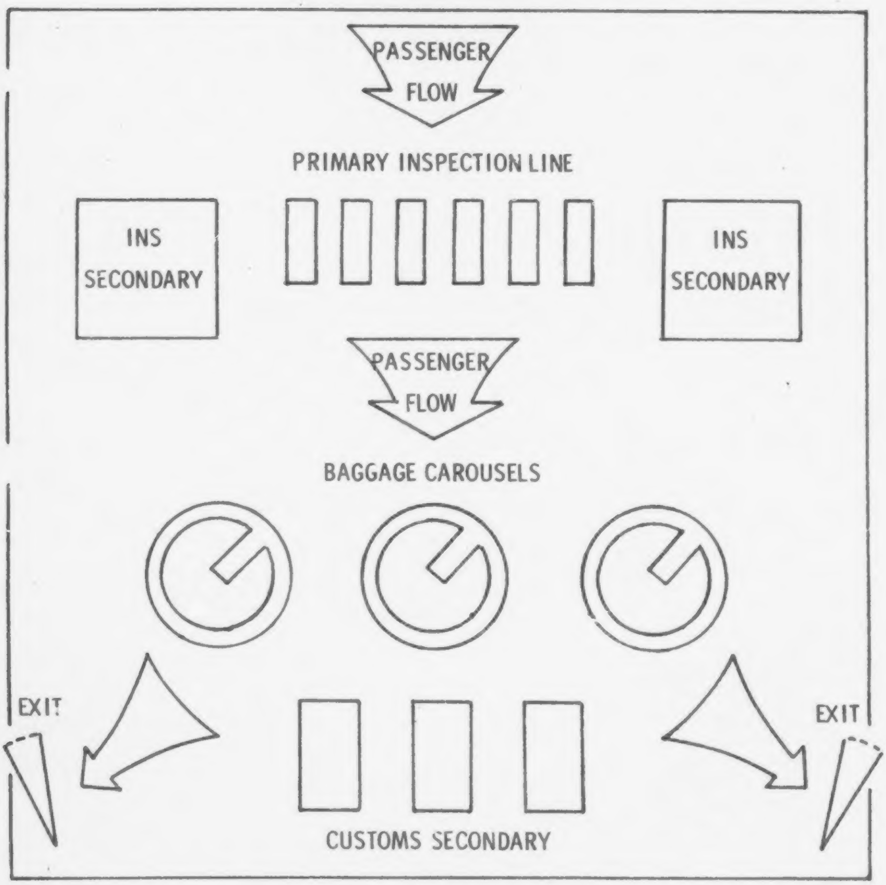
The Subcommittee is respectfully urged to appropriate funding for the staffing necessary to permit the efficient processing of international air commerce, and to direct the early consideration of appropriate simplification measures, specifically the GAO "one-stop" inspection procedure proposal and others outlined in this statement.

ADDITIONAL IMMIGRATION STAFFING REQUIREMENTS

For 1981
U.S. AIRPORTS-OF-ENTRY AND PRECLEARANCE AIRPORTS

Northern Region	Additional Inspectors
Anchorage	4
Chicago (O'Hare)	6
Calgary, Canada	3
Denver	2
Detroit	2
Edmonton, Canada	2
Portland, Oregon	1
Minneapolis/St. Paul	3
Seattle	2
Vancouver, Canada	4
Winnipeg, Canada	2
Subtotal	31
Western Region	
San Francisco	10
Honolulu	42
Agana, Guam	4
Los Angeles	31
Tucson	1
Subtotal	88
Eastern Region	
JFK (New York)	23
Boston	8
Baltimore	1
Philadelphia	7
San Juan, PR	16
Charlotte Amalie, V.I	5
Christensted, V.I	5
Dulles (Washington, D. C.)	5
Toronto, Canada	16
Montreal, Canada	18
Hamilton, Bermuda	3
Subtotal	107
Southern Region	
Atlanta	9
Miami	30
Tampa	1
San Antonio	3
Houston	20
Dallas-Ft. Worth	30
Freeport, Bahamas	4
Nassau, Bahamas	3
New Orleans	8
Subtotal	108
TOTAL	334

GENERAL ACCOUNTING OFFICE
ONE-STOP CONFIGURATION


PASSENGER FLOW
PRIMARY INSPECTION LINE
INS SECONDARY
INS SECONDARY
PASSENGER FLOW
BAGGAGE CAROUSELS
EXIT
EXIT
CUSTOMS SECONDARY

SCHEMATIC
FEDERAL INSPECTION AGENCY AREA

Air Transport Association
21 April 1981

ONE-STOP INSPECTION PROCEDURE
GENERAL ACCOUNTING OFFICE PROPOSAL*

Several facilitation proposals to simplify and otherwise expedite United States border-crossing formalities have been put forward by the Congress, the Administration, airport authorities and by the private sector. One recommendation by Congress, for example, a test and evaluation of certain customs passenger processing methods and customs/immigration inspection area facility configuration modifications, has been agreed to by the Customs Service, and is to be tried later this fiscal year, continuing into fiscal year 1982. These facilitation measures are necessary in view of the cuts in the staffing complements of the inspection agencies, particularly customs and immigration at ports-of-entry.

But the problem of peak international passenger arrivals, which will commence next month and continue into the summer and fall months at an accelerated rate, still remains. It is necessary, therefore, that some facilitation action be taken now in order to avoid chaotic conditions in the federal inspection areas at U.S. international airport terminals.

The GAO Proposal

One entry procedure to facilitate inspection formalities can be implemented almost immediately at most airports-of-entry with little or no facility modifications and with minimum associated costs for cross-training of immigration and customs inspectors and relocation and wiring of Treasury Enforcement Communications (TEC's) apparatus. This is the August 1979 Comptroller General proposed "one-stop" procedure, B-114898, whereby arriving international travelers undergo primary inspection prior to claiming their checked baggage. It works as follows:

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*See: Report by The Comptroller General of the United States, "More Can Be Done To Speed The Entry of International Travelers," B-114898, 30 August 1979.

- As today, upon deplaning, all arriving international travelers at an airport would proceed to the immigration booths. These facilitation booths, however, would now be manned both by immigration and customs inspectors who have been cross-trained to perform each other's function. Every traveler, whether a returning United States citizen, a visitor or an immigrant would be queried or profiled and his hand-carried baggage inspected. His or hers baggage declaration would be encoded (for example, alpha-numeric, color coded or otherwise) by the inspector.

- All travelers without immigration problems would then proceed directly to the airline baggage carousels or belts to claim their checked baggage. Those with the appropriate code would be permitted to depart the inspection area after handing over the baggage declaration card to an official at the exit doors.

- Travelers having special immigration problems would be referred to secondary inspection at offices adjoining the immigration booths as is done today. Passengers requiring secondary customs inspection for duty payment or other matters of an agriculture or customs nature would be referred for these purposes to the present Customs counters after claiming their checked baggage from the airline baggage carousels or belts. The baggage declaration of these passengers would be encoded to indicate a secondary inspection was necessary.

Advantages Of The GAO Proposal

The advantages of this system are: 1) It can be effected immediately after a short two or three day Immigration and Customs cross-training session; 2) it results in greater inspector productivity and less overall inspection personnel by combining Customs and Immigration staffing complements at the primary facilitation line, yet makes available sufficient inspectors, both immigration and customs, for travelers requiring secondary inspection; 3) it intercepts prohibited agricultural products where they are most likely to be found, that is, in the passengers' hand-carried baggage; 4) it provides a true one-stop inspection for most passengers since only a small portion normally will require secondary processing; and 5) it provides a buffer period giving the airlines time to deliver the checked baggage to the carousels and belts before the travelers arrive in the claim area.

The Canadian Experiment

Those interested in examining the GAO type of procedure in actual operation may visit Canada where the system has been in use for several years. Canada faces problems of a Customs and Immigration nature similar to those which confront the United States, and has similar concerns regarding the protection of its agriculture resources. The one-stop GAO recommended configuration works successfully in that country.

Senator COCHRAN. Thank you very much for the testimony and for bringing us up to date with this proposal. Speaking individually, this Senator will try to help you to get that in the proper focus. We just had a hearing in the Subcommittee on Agriculture and Related Agencies of this committee about 2 weeks ago and had before my committee that I chair the representatives of the Plant and Health Inspection Service who were discussing some of the problems they had. We will send that over to them and ask what their reaction to that is. They seem very cooperative.

STATEMENT OF ROGER CONNER, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Senator COCHRAN. Next, Roger Conner.

Mr. CONNER. Thank you, Mr. Chairman.

Senator COCHRAN. You testified before the Judiciary Committee last year.

Mr. CONNER. Yes, sir, I did, last year.

Senator COCHRAN. You were very helpful.

Mr. CONNER. We remember it even better than you, Senator. Mr. Chairman, members of the committee, I am Roger Conner. I am executive director for the Federation for American Immigration Reform. We do have a prepared statement which we have submitted to the staff.

Senator COCHRAN. I will make that part of the record at this point.

[The statement follows:]

STATEMENT OF ROGER CONNER

The Federation for American Immigration Reform (FAIR) opposes the proposals of the office of Management and Budget to make the largest single budget cut within the Department of Justice in the Immigration and Naturalization Service. At a time when immigration and pressures to immigrate to the United States have never been greater, it is folly to further emasculate an already crippled law enforcement and border defense agency. We believe that such cuts are inconsistent with the Reagan Administration aim of economy in government, and we believe that such cuts are penny wise and pound foolish for the United States as a sovereign nation.

The INS is scheduled to absorb 40% of all personnel cuts to be made in the Department of Justice, to lose 1,355 full-time positions, for a hoped-for savings of $8.2 million. Yet this reduction follows years of underfunding for the INS , and years of refusals by the Office of Management and Budget to carry out Congress' wishes with regard to INS staffing. In each of the past four years, Congress has authorized and appropriated more money than the OMB has seen fit to spend, yet no recission or deferral message has ever been offered by OMB to Congress, no explanation has ever been given for this defiance of Congressional mandates. Just last year, for example, this Committee voted $4.9 million more for the Border Patrol than requested by the OMB; the House of Representatives voted for $23 million more. Yet no additional personnel were hired.

Added to this chronic failure to obey Congress and this consistent effort to destroy the INS's effectiveness, now we find that most of the proposed cuts within the INS are to come from its vital law enforcement functions. Attorney General William French Smith suggested that the Border Patrol is not being cut. He said it is being maintained at the same level as before. But this is the same thing that was said last year by Attorney General Civiletti, and before him by Attorney General Bell. The Border Patrol has consistently received Congressional support for personnel increases, as it did last year with the final appropriations to fund 160 positions that OMB sought to eliminate. Yet those positions were never filled -- in Acting Commissioner David Crosland's words, "Because we would have had to fire them soon after we brought them on board. . . there wasn't enough money.' Continuation of seriously deficient personnel levels is not maintenance of the Border Patrol; it is continued abdication of a vital area of national soveignty and integrity.

Attorney General Smith, addressing the House Judiciary Committee when he first announced the INS cuts, said that the cuts were being made only in the least efficient areas of the INS, the "fat." The "fat" Mr. Smith referred to was the enforcement positions which involved apprehending illegal immigrants at ports of entry and in the interior of the United States. There is no fat in those areas, Mr. Chairman. Ever since 1977, the Border Patrol and INS internal investigators made over one million apprehensions of illegal immigrants each year. In 1980, that total fell under a million. It fell not because illegal immigration was slackening -- it was still rising, and at an alarming rate. It fell largely because the Border Patrol and the internal investigators had been working at the absolute limits of their capacity, and the crises of the Cuban flotilla, the Iranian students, and the Haitian entrants meant that they were stretched beyond their capacity. For every officer sent to Florida to process Cuban entrants, for every investigator trying to locate Iranian students, additional thousands of illegal immigrants came to the United States, additional hundreds of illegal immigrants continued to work within our borders.

In the proposed budget, criminal investigators, those who apprehend illegal immigrants within the United States and who perform background investigations for applicants for naturalization, will be cut from the 1200 of just three years ago and 900 today to 548 in FY 1982. This "fat" cutting may save $7 million next year. But, if the apprehensions of illegal immigrants by internal investigators are similarly reduced by 40% from today's levels, another 68,800 illegal immigrants will not be apprehended next year, costing the Treasury hundreds of millions of dollars next year in higher costs for benefits for displaced and unemployed American workers.

These proposed cuts come at the worst possible time for the INS. The pressure for aliens to immigrate to the United States has never been higher. Hunger, indeed famine, stalks much of the less-developed world. The brain-drain of professionals from third-world countries has expanded to include skilled laborers, mechanics, machinists, and other technical workers needed desperately by developing nations. Sixteen million refugees have been displaced across the globe, and the Worldwatch Institute predicted just last month that the 1980's will be the decade of the refugee, as refugee populations swell each year.

Immigration to this country, counting both legal and illegal immigrants, is at the highest level in our history. Estimates of illegal immigration are rising steadily, and the stock of resident illegal immigrants has risen steadily from the 3.5 to 6 million that demographers from the Bureau of the Census estimated lived here in the mid-1970's. And the workload of the INS has never been greater. More than a quarter of a billion border crossings will be made this year.

Drastic cuts in the INS will have a tremendous effect on the agency's ability to deal with these enormous and growing pressure. The cut in investigators will mean fewer illegal immigrants apprehended within the United States and longer delays for those applying for naturalization. The reduction in INS inspectors -- at a time when air traffic has never been heavier, means longer waits for passengers and a greater burden on customs and other agents at ports of entry. The so-called maintenance of the Border Patrol is actually a continuation of a very dangerous situation in which too few officers are facing overwhelming numbers of determined border crossers. The potential of danger in such a situation can be illustrated by the fact that more than half the officers at the Border Patrol's busiest sector (Chula Vista, near San Diego and Tijuana, Mexico) suffered injuries in the line of duty last year. Certain areas of that sector are simply not patrolled because they are too dangerous to patrol with the few officers available, and patrol vehicles have been armored to provide necessary protection for the officers.

Last year, we had a useful demonstration of what a drastic cut in resources or availability of INS law enforcement personnel and resources could mean in terms of increased illegal immigration. Last summer, in the Southern region, the Border Patrol ran out of gasoline. The unexpected drain on INS funds of the Iranian crisis meant that the Border Patrol ran out of money to run its patrol vehicles along the border. Despite official denials of any serious problem, numerous eyewitness and newspaper reports noted a dramatic increase in illegal immigration during that period. We know of instances in which the Border Patrol was informed of huge semi-tractor-trailers filled with hundreds of illegal immigrants being smuggled across the border -- and was unable to respond to the tip because officers didn't have the gas to drive to the border. Apprehensions in some regions dropped almost 90% from the same month the year before. Meanwhile, INS inspectors, hampered by the Carter Administration's fear of angering Iran, allowed Iranian nationals to enter the U.S. despite finding explicit terrorist manuals in their luggage. The New York Times reported that the inspectors were told to let any Iranian into the country. And, of course, there were not enough INS internal investigators to follow up on those who were suspected of being terrorists.

The INS is basically an enforcement agency; its job is to protect the United States and her people by enforcing the immigration laws. Yet the proposed cuts in the budget will affect most those enforcement activities, and will affect least those INS activities which provide benefits to aliens. We feel that the provision of benefits is important, but that the protection of American sovereignty and of Americans is even more important.

If these cuts are made, it is unquestionable that we will have more illegal immigrants in this country. If we have more illegal immigrants, federal costs will increase by many times the paltry saving made by cutting the INS. In late 1978, the Congressional Budget Office estimated that each unemployed American costs the Federal treasury $7,000 a year, not counting public service jobs costs. In 1979, INS enforcement officials apprehended more than 1 million illegal immigrants, 172,000 of them in the interior of the country. If only 55,000 of those apprehended illegal immigrants were replaced by unemployed Americans, the entire cost of the INS budget was returned to the Treasury.

Incidentally, these jobs were jobs that Americans would take. An INS survey last year in Los Angeles found that the average salary of apprehended illegal immigrants was $5.25 an hour. Twenty thousand people lined up for minimum wage jobs with the Social Security Administration in Baltimore, and 75 jobs opened by the apprehensions of illegal immigrant workers in a suburban Chicago foundry were filled within a day. And Acting Commissioner Crosland told the House Immigration Subcommittee that, in a survey done last year, 90% of the complaints phoned to the INS in Los Angeles were from Hispanic Americans who had been displaced from jobs.

Nor are unemployment costs the only penalty the Treasury pays for illegal immigration. The General Accounting Office issued a report on March 15 which found that "there were substantial numbers of illegal aliens in federally assisted housing projects," in some places occupying as much as 36 percent of all subsidized housing units. And costs for illegal immigration permeate state and local budgets as well. The state of Texas found that it would cost as much as $400 million a year for it to comply with a court order to provide a free education to illegal immigrant children. And Los Angeles County is suing the Federal Government for $89 million in unreimbursed medical costs for illegal immigrants in FY 1978.

Perhaps as a result of all of these factors, the proposed cuts in the INS budget do not enjoy significant support from any quarter. The Attorney General and Acting Commissioner were both given chilly receptions from the committees before which they appeared to defend these cuts. Attorney General Smith told the House Judiciary Committee that he would reconsider the INS budget as soon as he had considered the report of the Select Commission on Immigration and Refugee Policy.

The Select Commission, as you are aware, has recommended substantial increases in the law enforcement activities of the INS. Several bills have been introduced in both houses of Congress to bolster the INS. Among these bills is Senator Huddleston's Immigration and National Security Act of 1981, S. 776, among whose sponsors are several members of the Appropriations Committee, including Senators Cochran, Hollings, Chiles, Johnston, and Sasser. S. 776 calls for an increase in the

Border Patrol to 6,000 officers, an increase of several hundred criminal investigators, and for modernized equipment for the Patrol and INS. The bill also includes a provision which institutes user fees and other charges for immigration services which will provide an estimated several hundred million dollars a year in additional revenues to offset any additional costs the new programs might incur. FAIR wholeheartedly supports S. 776, and suggests that user fees are an appropriate alternative to a budget cut for the INS.

Cuts such are as proposed here by the OMB do not serve the ends articulated for the President's economic recovery program. The President is not asking for simple across-the-board slashes of all spending. He has said that he wants reductions in spending which reduce overgrown government, unneccessary and ineffective government agencies. Since cutting the INS will inevitably increase other government spending, such proposals are inconsistent with an overall recovery package.

The question then remains, why were these cuts proposed? Why is the INS, which was only 18 percent of the Justice Department Budget last year, being asked to absorb 44 percent of all cuts in Justice's budget? While we are not completely certain, we believe that the INS budget cuts are a continuation of the policy which held sway for so long under the Carter Administration, which was not reversed by senior officials in the Reagan Administration because of the complexity and unfamiliarity of the area of immigration. For several years, the Office of Management and Budget has been making a concerted effort to combine the border enforcement programs of the INS with those of the Customs Service. While this may be a worthwhile effort, and we make no judgment on it at this time, it is Congress which should make the determination of whether this should be done; it is not for the OMB to decide through the budgetary process. Therefore, we oppose any such effort by the OMB to mandate a consolidation of the two agencies through the use of the budget, and we hope this committee will not bow to pressure from the OMB to do so.

We hope that this Committee will provide a realistic funding level for the INS. At a minimum, no decrease in personnel and funding is necessary, for all the fat which ever may have existed in the INS disappeared long ago with the startling rise in legal and illegal immigration throughout the 1960's and 1970's. We hope that this Committee will impress upon the OMB the seriousness of its desire that all funded positions for the INS and Border Patrol be filled. We hope that this Committee will not allow the INS to deteriorate even faster.

The most effective action by this Committee would be to increase INS funding by $37.8 million over current policy levels. These funds would be used to provide 350 Border Patrol officers, 400 criminal investigators, and their required equipment. This level is still much below that required for truly effective guarding of American borders; the Border Patrol Supervisors Association estimated in 1980 that they would need 3,000 new officers to deter or apprehend 90 to 95 percent of all illegal border crossings. But it represents a manageable incresae in resources commensurate with both the rising workload of the agency and its feeble administration structure. May I remind you, last year the House voted overwhelmingly to provide $23 million more than the current levels for additional Border Patrol and internal enforcement officials.

Mr. Chairman, we appreciate the opportunity to present the views of the Federation for American Immigration Reform (FAIR) to the Committee. I would be happy to answer any questions you may have at this time.

Mr. CONNER. The Office of Management and Budget has proposed a budget cut of the U.S. Department of Justice. Within that cut is the Immigration Service. The proposal is 1,355 full-time positions be cut from this beleaguered agency. Even though the Immigration Service is less than 20 percent of the budget of the Justice Department, they are asked to absorb over 40 percent of the cuts to be given to the Justice Department.

We oppose this budget as the wrong idea at the wrong time. Mr. Chairman, this represents a continuation of a pattern set by the Office of Management and Budget during the Carter administration. In the last 4 years, Congress has authorized and appropriated more money for enforcement of our immigration laws and in each case, the Office of Management and Budget has refused to allow the expansion of enforcement, despite the fact no decision or deferral message has ever been delivered by the Office of Management and Budget to Congress, no explanation has ever been given to this defiance of congressional mandates. Just last year, this committee voted $4.9 billion additional for the border patrol, the House of Representatives voted $23 million more and yet no additional personnel were hired.

The cuts proposed by the Office of Management and Budget cut deep into the vital law enforcement functions. In the border patrol, for example, it is no news to yourself that we are desperately below the level we need. There are fewer people on the border as we sit here than there are uniformed personnel around the Capitol Grounds protecting it.

The Congress last year saw fit to add 160 border patrol positions. The Office of Management and Budget were determined to strip these positions in future budgets, so they did not permit them to be hired. Now they have removed them from the budget.

Furthermore, there are reductions among those, there are actual reductions in the number of people who will be out there looking for immigration violators within the United States. We have had a chance to experiment with the effect of such cuts. During the Cuban crisis, during the plight of the Haitian boat people, the Iranian student crisis, in each case people were removed from these enforcement functions and taken down to Miami and other places. The result is for the first time in 3 years, even though the illegal immigration problem has increased, fewer than 1 million illegal immigrants were apprehended in the United States.

Under this budget, 3 years ago there were 1,200 people available for investigating immigration law violators within this country. There are 900 today than, to the Carter administration's policy. Under this budget, there would be 540, a reduction of 40 percent. A reduction in the apprehension by those people who look for illegals within the United States, about 40 percent, would mean 68,000 fewer illegal immigrants would be apprehended.

Illegal immigrants are almost inevitably found working on public assistance in this country. Once the word travels, as it surely will, their chances of being apprehended are even less than before; the numbers of illegals looking for jobs, the number of illegals applying for various forms of public assistance can only increase. On this latter point, I call to the committee's attention, the State of Texas has been ordered by a judge to provide free education to illegal immigrants to the 12th grade. That will cost them $400 million a year. The county of Los Angeles is spending over $100 million a year in medical services for illegal immigrants.

Mr. Chairman, it seems to us simply an entirely inappropriate question. The question naturally arises, well, why was it proposed? This is a policy decision. This is not trimming away a few inspectors. This is a policy decision to slice in half the enforcement of immigration laws in the United States. This cannot be a policy decision of the administration because the administration has a committee set up at the direction of the President which is investigating immigration to determine what our policy should be.

I was invited to a meeting last Saturday of the people that are doing the work for the Attorney General and the other members of the Cabinet. They informed me that they called the meeting because they had not decided yet and because they were preparing the report and they are going to give options to the President on May 4, not even firm proposals, so this can't be a policy decision of the administration. Who is it?

At lower levels in the Office of Management and Budget there is a historical animosity to enforce. Animosity arose during the Carter administration because that was a policy of the Carter administration.

What this proposal is is an attempt, while all the other budget cutting is going on, to move into this a policy decision which is driving a nail into the coffin of the ability of the Immigration Service to enforce our laws. We urge the committee to reverse this decision in order to retain the alternative available to the administration of increasing enforcement. And that is why we are proposing, rather than the cut offered by the Office of Management and Budget, to increase the budget of this agency by $37.8 million. This would do two things:

Increase the border patrol by 350 people. The border patrol tells us this is about the number they can absorb in order to begin building back up to a reasonable force. And we propose 400 new inspectors, partly to deal with the problems referred to by the earlier witness, partly to bring us back to the level we were at 2 years ago during the efforts of the Carter administration to destroy the effectiveness of this agency.

I would like to add two P.S.'s, if I may. I would like the previous witness and our good friend to take a look at S. 776, cosponsored by yourself, Mr. Chairman, because in this bill it proposes user fees, that the Immigration Service be able to have the degree of processing of people as they come into airports, but without a cost being given to the American taxpayers, which we think is imminently fair.

Another note of caution, the people who are actually in the Immigration Service tell us one of the problems with this one-stop process is that it doesn't only reduce your manpower requirement substantially, what it does do is put American citizens waiting in the same line with large numbers of aliens because they both were as currently separated American citizens passes through Customs without stopping at Immigration and certain of these airports where 80 percent of the incoming flights are alien rather than citizens, there is a problem here that needs to be looked at with some care. The one-stop idea we don't oppose, but we want to make clear to the committee in no way can it address the problems in places like New York and Miami.

The number of foreign visitors is increasing and the previous administration has seen fit to reduce their ability to process those people.

Senator COCHRAN. I was going to ask how these user fees would work. I know that I am the sponsor of that bill and that it has fees in there for those who derive benefits from immigration services.

Mr. CONNER. That is correct.

Senator COCHRAN. That might be an interesting thing. He is not going to like it that much.

Mr. CONNER. As I understand their position, though, it is that the number of inspectors should be adequate for the flow. I don't think it is their position that the American taxpayer ought to make it easier for French visitors to come here. When an American travels to France, he has to pay a fee, a modest fee, probably $2, $3, $4, $5 to cover the cost of his inspection when he comes in because that is of benefit to him.

Senator COCHRAN. But it, in effect, would be an added cost of making the trip and the travel and somebody has to collect that and somebody has to turn that over to our Government agency. It might be the people represented by the Air Transportation Association. That is why I assume there might be some difficulty with that proposal as far as this earlier witness was concerned. What are the immigration services that remain available that would come under that bill?

Mr. CONNER. For example, a person applies for adjustment of status in the United States or applies for the extension of his stay, he currently makes that application, takes time to review it, process. Frequently applications are made, of course the immigration laws are incredibly complex, but every time an alien comes in and makes application for one of these benefits, particularly ones that are already here, that is what generates these long lines of people you get complaints about; places like Los Angeles. They are all asking for a benefit but most of them don't have to pay a fee at all. If they were applying for a new visa abroad at a consulate, they have to pay a fee.

When they apply for it here, even though more time would be required to process it, they pay no fee whatsoever.

Senator COCHRAN. One inconsistency between the proposal that is made in the budget about funding of INS and a recommendation made by the Select Commission on Refugees, immigration is for increasing staff at INS.

The Government created the Commission and asked that it report back and now that it is reporting back, the administration is making a recommendation that is just exactly the opposite of that made by the Commission that they convened.

Now they apparently are trying to work cross purposes with the Commission. What is your reaction to that?

Mr. CONNER. I think it makes it even more clear this is not a considered policy decision by the administration, but rather an effort by people at lower levels in the Office of Management and Budget. I don't mean to say they are carrying out personal vendettas, but they make personal policy judgments enforcing immigration laws in the United States is not a good policy.

They can carry that out in a movement. When the Director comes down and says give me some budget cuts and they say to me, look, this is cutting the fat out of the INS, this isn't cutting muscle, he isn't going to take the time to evaluate it, because it is a modest sum of money in the larger effort of the administration, which I think the American people support.

It slides through because it never really got a passing thought. And part of the reason is that the people in the administration whose job it is to make policy and look at such budget cuts from the standpoint of how it affects policy are in the process of reviewing what the process ought to be. It is a period in time where the lower levels of people in OMB have seized on it. The administration is trying to reduce welfare, they are trying to reduce unemployment compensation, they are trying to reduce medicare and medicaid, particularly with people of questionable eligibility. They are trying to increase the number of Americans employed. If you declare even more of an open season on American welfare and American jobs for illegal immigrants, it goes directly contrary, really to what the administration is trying to do. I know it sounds paradoxical.

I believe that for the committee to move the INS one step further toward the role of a better enforcement posture, it will be supportive of what the administration is trying to accomplish. I can't imagine on May 4 when that group reports to the President, they will not report just as the Select Commission did, just as Ford's Policy Council did in 1976, that we need to increase, not decrease enforcements.

Senator COCHRAN. You are very good to be here and provide the committee with such a thoughtful presentation. I know it will be appreciated by the other members.

Mr. CONNER. Thank you very much, Mr. Chairman.

STATEMENT OF SUSAN J. KOKINDA, WASHINGTON REPRESENTATIVE, NATIONAL DEMOCRATIC POLICY COMMITTEE

Senator COCHRAN. Our last member is Susan Kokinda, Washington representative, National Democratic Policy Committee.

Ms. KOKINDA. Thank you.

The National Democratic Policy Committee is an independent, multicandidate political action committee and policy-formulating body, formed in August of 1980 to provide the moderate and conservative base of the Democratic Party a national focal point.

We are very seriously disturbed with the President's proposed budget, especially the Drug Enforcement Administration at this point. I think if there was a clear mandate delivered to the President, it was clearly to do something about the drug epidemic sweeping the United States at this point. The budget which has been presented by the administration does not measure up to the task. To date both the quality of leadership and employment resources needed to take on this epidemic is severely lacking. The drug epidemic in the United States is a national security risk of equal if not greater importance than our declining military capability at this point.

I might say at least the administration has recognized a problem in our military's posture at this point whereas a similar recognition is not obtained in terms of the resources necessary to deal with the drug epidemic. It is clear to everybody, I think, some of the key impacts on our national economy and national security if we allow this to continue. Not only in the law enforcement area where it is obvious but in our military area it is equally serious. The state of drug usage of U.S. troops overseas is I think an international standard at this point.

The international narcotic trafficking networks closely interface with the international terrorists. From the standpoint in terms of our own national well-being, we are losing an entire generation of youth right now to the ravages of drug usage.

Finally, I think if Mr. Stockman is concerned about inflation as vigorously as he seems to be, he had better not ignore the $50 to $100 billion of illegal drug money floating around the United States at this point which probably adds much more of an inflationary impact on the U.S. economy than every budget expenditure imagined. If you take that international figure, you are probably talking $200 to $300 billion internationally, of unregulated money flows, which is probably one of the major causes of worldwide inflation.

In that light the DEA budget is clearly inadequate. I had a little difficulty with what the DEA Public Affairs told me and the Justice Department Public Affairs told me. The Reagan administration has proposed a $228 million budget for DEA. Whether that is an increase or decrease over the Carter budget is what I am having trouble ascertaining. Whatever it is, it is inadequate.

The basic problem with the deployment of our law enforcement funds at this point is that they are dangerously skewed. If you look at the amount of money going into white-collar crime, if you look at over the past 4 years certain criminal justice statistics in terms of the amount of cases brought on a Federal level for white-collar crimes versus the amount of cases brought on a Federal level for controlled substances, they are dangerously at odds with each other.

Prosecution for white-collar crime very practically quadrupled in the past 4 years. At the same time similar figures for actual narcotics investigations, convictions, selling, so forth, have been seriously shaved in terms of their numbers.

If you take on top of that a serious misdeployment of resources in terms of the so-called ABSCAM approach, which we are not great friends of, we have Federal money going to entrapment of political figures. Money spent in the witness protection program, where tens of thousands of dollars go to continue protecting convicted murders and self-confessed swindlers in a situation of protection and financial well-being, what we are not doing on the drug enforcement front is nothing short of criminal.

In specific terms, in terms of the 1981 and 1982 budget, severe cuts have been made in absolutely critical programs. One in particular has been the curtailment of the Southwest Asian program. There was a request of adding 20 agents and maintaining an active regional force in dealing with Southeast heroin.

The request for those has been turned down in the supplemental and 1982 budget. It is unfathomable that that kind of decision could be made at this point when heroin is flooding the east coast of the United States.

At the same time, the Carter years reaped certain amounts of havoc in terms of our international narcotics capabilities. Key regional offices were closed down. The most amazing is the essential closedown of the Paris office as a regional office although DEA still claims there are agents there and they can continue to function.

Our European allies consider this a bad joke at best. In fact, they tell us if we wanted to carry out a French connection bust at this point it would be impossible in terms of the U.S. side of things.

We need to be able to apply the kind of resources in the French connection with the civilian connection, which is where the southwest heroin is being mediated into the United States. We do not have the regional office manpower capabilities in Western Europe at this point to do that.

Over the Carter years, other key regional offices were closed down. Offices like Ankara, Turkey, Manila office, Caracas office. The Manila office is being threatened to shut down. While this leaves a few agents on the scene, it does not give the kind of command and control capability that our international allies need to carry out any kind of effective war against the narcotics.

Domestically what the 1982 budget slices is 50 percent of the domestic and regional task forces where the Federal Government cooperates on a State and local level in a kind of task force approach which is really the only effective way of dealing with international narcotics trafficking. At the same time, as one of the other panelists has stated, there are serious cuts in INS, also in Customs, also in border patrol at this point. We are essentially disarming ourselves in the war against drugs at this point. The fact this has escaped certain amount of public notice, I think, is surprising in and of itself. The fact President Reagan is allowing this to happen is somewhat unfathomable.

We have to confront a basic change of law enforcement policy in the United States.

I would like to conclude by quoting from our advisory committee chairman, Mr. LaRouche. What he states is:

> The fundamental policy for law enforcement must not start from the problem of apprehension and conviction of particular perpetrators after the fact of a commission of a particular crime. The fundamental policy of the law enforcement and related enactment of statutes is to shake the interrelationship between law enforcement and criminal statutes such that we define an efficient means under due process and related considerations of probable cause to deploy law enforcement professional institutions in a winning war against the infrastructure of criminality.
>
> Contrary to British doctrine, the proper determination of the significance of and procedures for treating a particular after-the-fact perpetrator, is made solely on the basis of significance of those procedures for enhancing the war against the infrastructure of criminality.

It is precisely that infrastructure of criminality that DOPE, Inc., represents. I fear with the present budget, we are disarming ourselves. Thank you.

[The statement follows:]

STATEMENT OF SUSAN KOKINDA

The National Democratic Policy Committee is an independent, multi-candidate political action committee and policy-formulating body, formed in August of 1980 to provide the moderate and conservative base of the Democratic Party a national focal point.① The National Democratic Policy Committee is committed to supporting the present Administration as it carries out policies which further the mandate for economic growth delivered in November 1980.

There is no question that another mandate delivered to President Reagan in his election was a mandate to stem the drug epidemic engulfing the United States. Unfortunately, to date, the quality of leadership and the deployment of resources has so far been lacking in the Reagan Administration as represented most clearly in the proposed budget for the Drug Enforcement Administration for FY 1982. While there are nominal increases in funding for a few areas of DEA and while the DEA has suffered personnel cuts "smaller than other areas of the government", there is no manifest change in the policy direction of our drug enforcement effort; that is, no change in the approach taken -- unsucessfully -- by the Carter Administration over the past four years.

The drug epidemic rampant in the United States is a national security risk of equal if not greater magnitude than our inadequate defense capability. The Administration has at least recognized the need for a reversal in defense posture -- it has not done so in the area of narcotics enforcement. The cost to the United States and the threat to national security is overwhelming:

*The drug epidemic carries with it enormous increases in the amount of violent crime in the United States.
*Our Armed Forces, especially overseas in Western Europe, are a national disgrace in terms of drug usage and an international security risk. The proposed Rapid Deployment Force might more acurately be called a Rapid Drug Deployment Force.
*International narcotics trafficking networks closely interface with international terrorist networks, and the successful drying out of one is necessary for the successful curtailment of the other.
*Our most precious resource -- the next generation of youth -- are being destroyed as the drug menace infects every community in the U.S.
*Our economic productivity is drained by the disabilitating effects of drug usage.
*Finally, if anyone purports to be concerned about inflation and ignores the $50- to $100-billion in illegal drug money flooding the the U.S. and the $300 billion a year illegal narcodollar flow -- they should be put in a safe place far removed from the reins of economic policy-making.

In that light, the DEA FY82 budget represents a dangerous, business-as-usual approach. While the Reagan Administration increased the DEA budget by $7.8 million over the Carter request, the increase is inconsequential when measured next to the necessary change in policy directions and resources needed.

Worse, our law enforcement policies and priorities remain dangerously skewed. As NDPC's Advisory Council Chairman Lyndon H. LaRouche, Jr., stated in a Febuary 1981 policy-discussion paper entitled "Urgent Reforms of the Criminal-Justice System," "...We must reverse the odious allocation of resources of the U.S. Department of Justice, which has shifted the Department's efforts away from combatting crime, toward engaging in the manufacture of criminal activities." He is referring to the notorious entrapment operations of ABSCAM and BRILAB and their ilk, and to the enormous emphasis of "white collar crime."

That latter point bears elaboration. In 1975, the year before the white collar crime category was added to the dictionary of federal offenses, 8,135 cases involving 13,645 accused drug traffickers were launched. Three years later, the figures dropped to 4,299 cases involving 8,237 defendants. The number of cases placed before federal courts involving "controlled substances" was halved. Similar figures obtain for bank robbers and kidnapping, as further examples. During the same time frame, white collar convictions skyrocketed, nearly quadrupling. In 1979, FBI Director Webster claimed that 81,000 separate white collar crime investigations where opened in that year alone. One-quarter of the entire manpower allocations of the Bureau went into prosecution of white collar crime.

On a similar front, the Justice Department's programs to entrap, especially, political and labor figures, consumes an enormous portion of the federal law enforcement budget for the purpose of creating crimes. In particular, the Federal Witness Protection Program, which pays, in many instances, convicted criminals, to employ their criminal "skills" "for the purpose of federal prosecution," has a budgeted cost of over $100,000,000. Among other individuals on the federal payroll through the FWPP are Jimmy Fratianno, who has been given complete immunity while on the federal payroll, despite his implication in three murders since coming under the protection of the FWPP. Fratianno has committed a total of 11 murders; convicted con-artist Melvin Weinberg, who has collected an estimated $491,000 tax free during the years he has been on the FWPP protection list (both for non-prosecuted scams and payoffs from the FBI itself); and Joe Hauser who receives $65,000 annually from the Justice Department.

While we are paying convicted criminals and murderers hundreds of thousands of dollars during the time of fiscal austerity, this is what we are NOT doing in federal narcotics enforcement. We do not have a preemptive capability, either internationally or domestically, to deal with illegal narcotics flows.

Internationally

The OMB turned down a DEA fiscal 1981 supplemental request to increase funds for interdiction of drugs from the crucial Southwest Asian "golden crescent area." That request has not been renewed. And while the '82 budget includes funds for the increase of 10 agents in the Foreign Cooperative Investigations, that in no way counteracts the damage down by the Carter Administration's closing down of the Paris regional office last year. Of the 24 staff members, four agents and one secretary remain as a local operation, but the importance of Paris as a regional operation in dealing with Western Europe, the Mideast, North Africa and the Golden Crescent. We could not carry out a French Connection bust at this point, nor can we effectively deal with the Sicilian Commection. In 1978, the DEA closed down the Ankara, Turkey regional office. The Manilla regional office has also been closed down. The Caracas regional office was closed in 1979.

Domestically

The projected reduction in the FY82 budgetting for DEA's support of state and local task forces will result in the termination of 50 percent of existing task forces. It is on this level of task force, "cross-agency" cooperation that narcotics interdiction can be most effective, preemptively -- along the lines of the now terminated El Paso Intelligence Center (EPIC). Block grants for state and local law enforcement, as well as reinstitution of these critical state and local task forces are necessary.

Coupled with critical cuts in the capabilities of Customs, the Border Patrol and INS to effectively augment our interdiction efforts, U.S. domestic drug enforcement is in as much a shambles as our international capability.

This only addresses repairing the damage already done to our drug enforcement efforts and leaves aside such new legislative approaches as repealing the ban on paraquat, employing various military capabilities and technologies, and establishing an international Narcotics Enforcement Treaty Organization (NETO).

Ultimately, this requires a change in law enforcement philosophy. Quoting again, from the aforementioned policy-discussion paper:

"The fundamental policy for law enforcement must not start from the problem of apprehension and conviction of particular perpetrators after the fact of the commission of a particular crime. The fundamental policy for law enforcement and related enactment of statutes is to shape the interrelationship between law enforcement and criminal statutes wuch that we define an efficient means under due process and related considerations of probably cause to deploy law-enforcement professional institutions in a winning war against the infrastructure of criminality. Contrary to British doctrine, the proper determination of the significance of and procedures for treating the particular after-the-fact perpetrator, is made solely on the basis of the significance of those procedures for enhancing the war against the infrastructure of criminality."

We can make a step in that direction be augmented the DEA budget in the manner proposed above.

Senator COCHRAN. Thank you very much for being here and being a member of this panel. To each of you, let me express my sincere appreciation for being here and the contribution you have made to our hearings.

SECURITIES AND EXCHANGE COMMISSION

STATEMENT OF GLEN K. PARKER, CHAIRMAN OF THE FREEDOM OF THE PRESS COMMITTEE, NEWSLETTER ASSOCIATION OF AMERICA

ACCOMPANIED BY:

FREDERICK GOSS, EXECUTIVE DIRECTOR, NEWSLETTER ASSOCIATION OF AMERICA

RON PEARSON, MANAGING EDITOR OF A GROUP OF NEWSLETTERS OF THE NEWSLETTER ASSOCIATION OF AMERICA

Senator COCHRAN. Our last witness is Glen Parker, representing the Newsletter Association of America.

Mr. Parker, you may proceed.

Mr. PARKER. Good afternoon. Thank you for affording us this opportunity to address this committee. My name is Glen Parker and I am chairman of the Freedom of the Press Committee of the Newsletter Association of America. With me, to my far left, is Frederick Goss, the association's executive director in Washington, and next to me is Ron Pearson, who is managing editor of a group of our newsletters.

Our 500 members publish 1,200 newsletters read by several million subscribers. Many of our members publish newsletters that cover financial and investment topics, and they are therefore considered by the Securities and Exchange Commission to be "investment advisers"—even though these newsletter publishers have no custody of, or control over, readers' investments.

When Congress enacted the Investment Advisers Act, it specifically exempted from the definition of "investment advisers" any publisher of a "bona fide newspaper, news magazine, business or financial publication of general and regular circulation." Presumably this was done to protect the media's freedom of the press.

The Securities and Exchange Commission nevertheless insists that newsletter publishers are investment advisers and imposes a very extensive, complex, and burdensome regulatory scheme upon them—although magazines and newspapers containing identical investment reports are not required to register in the fashion our newsletters are. Those of our members that publich investment and financial newsletters are doubly concerned with the SEC policies and expenditures, for besides having the opportunity to observe the impact of SEC policies on the marketplace, they themselves are subject to its regulatory sway.

Individual publishers are understandably loathe to criticize an agency that holds life and death power over their newsletters. However, the Newsletter Association of America, speaking both on behalf of our industry, and as the representative of a substantial body of taxpayers, urges you to substantially reduce SEC appropriations for the forthcoming fiscal year.

The 18-percent reduction from actual fiscal year 1982 expenditures recommended by President Reagan's transition team is an achievable and reasonable target, and we urge you to follow that recommendation. We specifically suggest that the $8 million requested for the regulation of investment advisers and companies be cut 50 percent, saving the taxpayers nearly $4 million.

Last year, the then Chairman of the SEC told the Congress that the Commission had sufficient resources to conduct examinations of investment advisers on an average of only once every 12 years. However, based on the actual experience of our members, those newsletter publishers that have been forced to register as investment advisers are examined on an average of once every 2 to 3 years, notwithstanding that they have no more access to anyone else's money or securities than the editors of Forbes, Barron's, or the Wall Street Journal have to the assets of their readers.

The SEC says: "In 1982, emphasis will be placed on increasing the number of investment adviser examinations." It may well be that an increased pace of examinations is appropriate for money managers who have custody of clients' moneys and securities, but we submit that no useful purpose will be served by more frequent examination of newsletter publishers. The SEC prefers to regulate newsletters by example, by publicity rather than publishing regulations and guidelines. By that we mean when the SEC wishes to expand the scope of its control over our industry, rather than letting the newsletter industry know what it expects of them, it makes up a scapegoat and makes us a public example of the conduct which it wishes to proscribe.

Regulation by example and publicity is the most expensive, least fair, and most futile way to govern an industry. Whatever prophylactic effect the SEC unannounced inspection rates on publishers' offices would be obtained at a fraction of the cost albeit with less publicity by publishing a simple set in plain English, intelligent guidelines, the fact the SEC has not done so suggests it is interested in neither efficiency nor fairness. Reducing or eliminating SEC expenditures on newsletter regulation will do more than save the taxpayers several million dollars. It will also save the newsletter industry very substantial costs in complying with SEC regulations.

It will also aid small business. A typical newsletter is ill-equipped to deal with an expanding bureaucracy. The public will benefit from reduced prices, increased competition, and a wider choice of publications.

Finally, there are substantial constituencies and substantial public support, as we heard here today, for many of the programs that you will be forced to trim as you work to reduce Federal spending and achieve a more balanced budget.

We submit that there is absolutely no constituency, there is absolutely no public support whatsoever for the SEC's continued lavish expenditures under newsletter regulations. We respectfully request that you put an end to it.

Senator COCHRAN. It is rather refreshing, frankly, to hear someone come up and say we want you to cut exactly what they recommend you to cut from this budget for an agency.

There are many groups from home coming up to say we are here to tell you we support the President's recommended budget cuts, but there is one we want to tell you about which is not really a cut, this expenditure is an investment. In many cases they are absolutely right. We have a lot of very worthwhile and important programs that are under pressure this year. It is good to have your thoughts about this investor program.

I think the committee will be very interested in your thoughts and your testimony about it.

Thank you for being here patient through the testimony of the other witnesses that have come before the committee today.

Mr. PARKER. Thank you.

ADDITIONAL SUBMITTED STATEMENTS

Senator COCHRAN. I will say at this point that any other statements that the committee may receive from other individuals or organizations will be made a part of the record at the conclusion of today's hearing.

[The information follows:]

STATEMENT OF BARRETT STAMBLER, SOLAR LOBBY

Thank you for the opportunity to testify before the distinguished members of the Subcommittee on the Small Business Administration (SBA) Energy Loan Program. My name is Barrett Stambler. I am representing the Solar Lobby, which came into being as a result of the widespread enthusiasm for renewable energy resources. Our current membership is 37,000. Small businesses will play a pivotal role in the rapid development of a competitive, decentralized renewable energy industry. In view of this the Administration's ostensible dedication to getting America's business untracked is contradicted by its decision to rescind 87 percent of the direct loan funding for the 7(l) Small Business Energy Loan Program for Fiscal Year 1981.

Furthermore, we take strong exception to the Administration over its proposal to completely eliminate direct loans in this same program in Fiscal Year 1982 and to consolidate the energy loan program with other existing loan programs. These are proposals which are penny wise and pound foolish.

Mr. Chairman, we are grateful to this Subcommittee for its strong support for small business in general and for its continuing support for renewable energy small businesses in particular.

The Small Business Administration's (SBA) Small Business Energy Loan Program was created to provide direct and guaranteed loans to solar and energy conservation small businesses. This program has funded all types of renewable energy businesses, including small alcohol fuel companies, wood stove stores, wind energy businesses, energy conservation manufacturers, and solar water heater distributors. Over the last three years, this loan program has provided desperately needed capital to over 290 small energy businesses at an average loan of $144,000.

Clearly, the mood of the country is to identify wasteful and inappropriate federal spending. However, we must also recognize that one of the biggest contributors to rising inflation is our dependence on imported oil. A healthy and rapidly growing solar industry affords significant opportunity to reduce this dependence. The Domestic Policy Review of the Federal Solar Program calculated that we can reduce our imports by one million barrels of oil per day by the year 2000, by increasing our reliance on renewable energy to 20 percent of total consumption.

Most currently available solar technologies lend themselves well to small and intermediate-sized firms.

Drawing on the inventive genious and drive of the nation, small businesses will be critical to solar development.

A recent National Science Foundation Study concluded that small business firms have an innovation rate 24 times that of large businesses per dollar invested. Similarly, the Office of Management and Budget found that, since 1953, over half of all major innovations have come from small business.

On April 10 of this year, the Democratic Study Group released a report analyzing the impact of Mr. Reagan's proposed cuts in SBA's Business Loan and Investment Fund (BLIF) under which the 7(l) Small Business Energy Loan Program falls. The report stated, "The Administration's proposals will result in fewer small businesses receiving SBA loan assistance, and those that receive it may have to pay higher interest rates. According to the SBA, almost 7,000 fewer loans will be financed by the BLIF in FY 1981 and, consequently 33,000 jobs will be lost. In FY 1982, the cutbacks will mean about 9,700 fewer loans and the loss of about 45,000 jobs."

The Administration's proposed cuts will have an even greater impact on the renewable energy industry for several reasons. First, 85 percent of the solar industry, which the Solar Energy Industries Association estimates to comprise about 1,000 companies, are small businesses. Second, although the Administration is proposing a 26 percent cut in direct loan money for all small business loan programs for Fiscal Year 1981, it is recommending a 87 percent cut for the special energy loan program. Third, this is the only federal program that speaks directly to the solar and conservation small businesses.

Having weighed these factors, the Solar Lobby cannot support the Reagan Administration's proposed rescissions. We are encouraged that your Subcommittee has rejected attempts to eliminate the direct loan portion of this energy program in the past. Just last year, the Carter Administration recommended eliminating the direct loan portion of this program. Not only did your Subcommittee reject Carter's request, but working closely with the House, you agreed to double the direct loan portion of this program. As a result, the Continuing Resolution for Fiscal Year 1981 includes $30 million in direct loans as compared to $15 million in FY '80 for the Small Business Energy Loan Program. The Solar Lobby strongly supports your decision to increase funding for this program and believes that assistance to solar small businesses will ensure a more competitive market by promoting innovation, cost reduction, and improvements in installations and service.

Besides its impact on the market, this loan program deserves support for several other reasons. First, the Administration's desire to combine this energy loan program with other SBA loan programs would, in effect, nullify the original intent of the program to provide direct, low-interest, high-risk loans to new solar small businesses. Consolidation would mean that solar businesses would compete with less vital industries for limited capital. Only a separate loan program for small businesses in the energy field can maximize the access of small and new solar companies to capital. The House and Senate Small Business Committees recently released reports that stated as a major conclusion that the primary obstacle to the development of solar small businesses is access to capital. The 7(l) energy loan program was established to address this problem because many solar small businesses found private lending institutions reluctant to give loans to solar businesses because their products are new and innovative, because they are themselves newcomers, and because capital markets in general have tightened up. Whereas larger companies have the assets and collateral needed to obtain loans, young solar businesses are not yet in full charge of their own destiny.

Before the 7(1) program was established, the Small Business Administration was advised by the Senate and House Small Business Committees to provide loans to solar and conservation small businesses. The Small Business Administration recently informed us, however, that before the establishment of the 7(1) Program, only three loans were provided to young energy businesses. As a result of SBA's failure to allocate energy loans on its own, legislation was required to force this action. Consolidation will throw us back to the previous era, and we can expect once again to neglect solar and conservation loans.

The Solar Lobby has been in touch with some of the business-people who have been able to obtain loans under this SBA loan program. Those contacted agreed that this program is essential to the development of small business in the solar energy field. Many said outright that their SBA loan made the difference between life and death for the firm--that it had enabled them to get on their feet. One New York businessman who received a $160,000 loan under this program stated: "If it wasn't for SBA and the small business energy loan program, our company wouldn't have survived. The loan helped us triple our business last year." An American University survey of several loan recipients supported the finding that the program was a success. Clearly, this loan program is keeping solar businesses alive, and, consequently is helping the nation save energy--which is the basic intent of the 7(1) program

To reiterate, direct loans are the most essential part of an essential program. Thus, the Solar Lobby rejects the Administration's desire to rescind $26 million in direct loans for FY '81 and their call for complete elimination of direct loans in FY '82.

We have learned from the Small Business Administration that over two thirds of the loans over the life of the 7(l) program have been in direct funding. The direct loan portion of this program exists to provide funds when conventional sources are unavailable, as called for by the regulations for the energy loan program. Section 130.8 of the final rule states that "no loan shall be made under this program unless the financial assistance is not otherwise available on reasonable terms from non-federal sources. Also an immediate participation will not be approved unless a guarantee participation is not available..."

This rule is critical to solar small businesses' future. Evidence indicates that the 90 percent guaranteed loans have not been a strong enough incentive for banks to assist solar and conservation businesses. According to one recent survey, solar small businesses were refused loans because the solar energy industry is new and thus without a track record, In the eyes of the banking establishment, it apparently represents unacceptable risks. Ths truth is the success of the 7(l) program is predicated on the direct loan portion of this program.

The figures for FY '80 clearly indicate the hesitancy with which banks view guaranteed loans. Congress appropriated $30 million in guaranteed loans for 1980 and only $12 million was expended. At the same time, direct loans were depleted in less than half the year. Moreover, direct loans are much more attractive to solar small businesses because their interest rates are lower: about 8¼ percent, as compared to recent interest rates of over 19 percent for regular business loans. Simply put, guaranteed loans do not provide the needed incentive to encourage solar small businesses.

Small business' demand for this program exceeds the loan program's funding. The full $30 million in direct loans appropriated in the continuing resolution for FY '81 is easily justified.

Solar Lobby's research indicates that the $15 million appropriated in direct loans for Fiscal Year 1980 was expended in the first six months of the year. Furthermore, waiting lists in SBA field offices for future funding for this program are long and lengthening. As the following excerpt from an SBA quarterly report clearly indicates, the demand for this loan program is increasing:

> "The Small Business Energy Loan Program, during the first quarter of FY '80 as well as the year since it was implemented in January 1979, has been well accepted by the public--perhaps too well since direct funds are only $15 million for this year and the banks are not making many guaranteed loans for this purpose. In the first quarter we approved all of the $3.75 million allotted within the first 30 days of the quarter, and therefore others are on standby for the April allotment which will undoubtedly be used on receipt, thus building up another standby list for July. In the first quarter we also approved $2 million in guaranteed energy loans."

We believe that demand for the 7(l) program will continue to increase. Recent increases in tax credits for consumers who purchase solar equipment will, along with the Administration's decontrol of oil, certainly escalate demand for cheaper, more efficient alternative energy sources. However, increases in demand cannot alone create adequate sources of capital for small businesses in a new industry that has no credit history. All indications are that capital markets will remain tight for the foreseeable future and that a competitive solar industry with a strong small business component will not be in place to meet consumer demand.

Furthermore, SBA's loan programs are an excellent investment. In fact, appropriation levels for loan programs are quite deceptive since these loans have such a low default rate. Some SBA officials characterized the default rate on energy direct loans as approximately 8-10 percent. Thus, for a very small sum of money, the government is assisting needy small businesses, encouraging innovations and creating thousands of jobs.

This Administration's proposal works an unconscionable injustice on America's small busineses by targeting them for a much higher cut than other programs. We strongly endorse the Subcommittee's desire to give small business a fair shake in solar as in all enterprises.

Mr. Chairman, one final note regarding the market for solar products. In a recent poll conducted by the Gallup organization, solar once again proved to be the first choice of homeowners for continued Federal support.

We believe that this represents a tremendous potential market that America's small businesses should have a crack at developing.

We sincerely hope that, with your support, they will have that opportunity.

Mr. Chairman, this concludes my testimony. I would welcome questions from any member of the Subcommittee.

STATEMENT OF WESLEY F. HAYDEN, LEGISLATIVE COUNSEL, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

As you know, the International Association of Fish and Wildlife Agencies represents state and federal entities concerned with conservation and management of fish and wildlife resources.

Many of the activities undertaken by its members for that purpose come within the province of the Interior Department's Fish and Wildlife Service and the Commerce Department's National Marine Fisheries Service. Hence, we have a direct interest in the respective budgets of those agencies. And because effective operation of some of the priority programs in which the state members are engaged depends on federal grants-in-aid, we are deeply concerned by the prospect of elimination of funding for all such assistance in Fiscal 1982.

We very much hope that possibility can be avoided without prejudicing the Administration's cost-cutting efforts.

It is with that objective in mind that the Association has developed the budget alternatives outlined in the attachment to this letter.

We recommend, among those changes, restoration of the state grant provisions. Recognizing the necessity for fiscal restraints, however, we also propose spending reductions in other aspects of those agency budgets.

In our judgment, this course will serve both the needs and best interests of our members and the cause of fiscal responsibility.

Your subcommittee's full consideration of, and hopefully your concurrence with, those recommendations as you deal with the related appropriations issues coming within your area of jurisdiction will be much appreciated by the Association and its membership.

FEDERAL BUDGET RECOMMENDATIONS

International Association
of Fish and Wildlife Agencies
April 10, 1981

The following summary outlines the position developed for the International Association relative to changes in the respective budgets of the Fish and Wildlife Service and the National Marine Fisheries Service at the direction of the Association's Executive Committee.

It is the consensus of the Ad-Hoc Committee given the assignment that the suggested funding revisions will advance the best interests of the Association and its member states and the changes are commended for consideration in that context.

FISH AND WILDLIFE SERVICE
(Recommended Funding Increases)

1. Endangered Species: This program is considered to be of primary interest to individual states and essential to their efforts to protect and preserve rare species from extinction.

It is therefore recommended that $4 million be restored to the Fiscal 1982 budget for funding of program grants to states.

2. Anadromous Fish: Measures for conservation, development and enhancement of anadromous fish resources coming under Fish and Wildlife Service jurisdiction are dependent on continuation of funding for this item.

The budget as it now stands provides no money for the purpose but we recommend restoration of $3.5 million for the year.

3. Southeast Wildlife Disease Study: This concerns a research project initiated at the University of Georgia in 1957 and carried on since that time for identification and evaluation of diseases and parasites common to game and domestic animals. Results of the study have contributed significantly to improve wildlife management and the item is included in the priority list at the request of the Southeast Association.

A budget addition of $200,000 is recommended for that purpose.

4. Cooperative Fish and Wildlife Research Units. Established in 1936, the 50 cooperative units have provided a continuing source of trained manpower and factual information essential to state and federal fish and wildlife management efforts. They have sustained a mutually supportive relationship between the land grant colleges, where the units are located, the state and federal wildlife agencies, and private wildlife management.

A restoration of $4 million of the deleted $4.9 million is recommended for Fiscal 1982 program support.

5. Peregrine Falcon Restoration: A cooperative project being carried out at Cornell University to develop procedures for raising these falcons in captivity and subsequent release and re-establishment in their natural habitat. This project began in the Northeast but now involves other regions of the country and the undertaking involves support from federal, state, and private interest groups.

No funding is provided in the Fiscal 1982 budget and it is recommended that $300,000 be added for that purpose.

6. Non-Game Program: Authorized under the Fish and Wildlife Conservation Act of 1980, this program is intended as an incentive to states to develop management programs for non-game species—those not hunted for sport, subsistence, or economic reasons.

The legislation authorizes $5 million in matching grants to states in each of the next three fiscal years but no provisions is made in the Fiscal 1982 budget. We recommend that $3 million be added for that item.

The increases recommended for the Fish and Wildlife Service activities toatl $15 million.

(Recommended Funding Decreases)

To offset that additional spending we are recommending reductions in other Fish and Wildlife Service budgetary objectives totalling just under $16 million.

Those recommended reductions include the following:

1. Animal Damage Control: This cooperative program is designed to address the problem of wildlife depredations.

The Association supports that objective as worthwhile and necessary and has, in other papers, recommended improvement. But it is believed that it can be accomplished with somewhat less than the budgeted total of $18.2 million for Fiscal 1982.

It is therefore recommended that the figure be reduced by $4 million.

2. Area Offices: The Fiscal 1982 budget provides approximately $6.8 million for operation of these units, which are part of an agency organizational structure which also includes field and regional offices in various parts of the country and with its central office in Washington.

There appears to be some duplication of effort in such an arrangement which could be eliminated with a resultant saving in money and effort.

We, therefore, recommend a $1 million reduction in the budget figure for the year as the first step toward reorganization and streamlining of the system.

3. Administration-Planning: There also appears to be some over-emphasis on, and some duplication of effort between, program development and budget planning operations which, if eliminated, could result in monetary saving.

We, therefore, recommend a reduction of $700,000 in the budget figure of approximately $1.4 million for that phase of the service operation.

4. Fish Hatcheries: The Fiscal 1982 budget for the hatchery system operated by the Fish and Wildlife Service throughout the country is approximately $25.6 million.

It is recommended that this amount be reduced by $3.5 million by selective curtailment of operations.

5. Alaska Refuge Management: An allocation of $1.9 million is included in the Fiscal 1981 supplemental appropriation for the Fish and Wildlife Service to cover start-up costs for operation of nine new refuges and seven expanded ones provided under Alaska National Interest Lands Conservation Act. Another $3.8 million is provided in the Fiscal 1982 budget for Alaska refuge management.

Based on assurance that these are objectives with longe-range worth but which can be postponed, if necessary, for the moment without significant damage to the state's interests, the Association recommends elimination of these funds from current budget consideration, with a total saving of $5.7 million.

6. Alaska Fishery Assistance on Refuges: There is a separate provision in the Service Budget for Fiscal 1982 for approximately $1 million to fund this program.

That objective, however, is related to those referred to above (in item 5) and would therefore be addressed in the same general frame of reference.

For that reason, it is recommended that the $1 million figure be among those eliminated from the budget.

U.S. DEPARTMENT OF INTERIOR
(Recommended Decrease)

International Convention Advisory Commission (ICAC): The ICAC was created on the premise that the Secretaries with authority for administering the Convention on the Control of International Trade in Endangered Species (CITES) could not be expected to render impartial decisions on factors related to population status and impacts of trade. In our opinion, the professional staff of the Commission is duplicative and its functions can be absorbed by the U.S. Fish and Wildlife Service without prejudice to the resources involved.

A reduction of $275,000 is, therefore, recommended from the $315,000 figure budgeted for ICAC in Fiscal 1982.

NATIONAL MARINE FISHERIES SERVICE
(Recommended Increases)

1. Commercial Fisheries Research and Development: This program, authorized under Public Law 88-309, provides grants to states covering 75 per cent of the cost of research and development activities relating to commercial fisheries and has assumed even greater significance since passage in 1976 of the Fisheries Conservation and Management Act.

In the Association's judgement, the proposed elimination of funds for this program from the Fiscal 1982 budget would have a serious impact on state efforts in that field.

We consequently recommend restoration of the entire $5 million originally requested for those activities.

2. Anadromous Fish: Initially authorized under Public Law 89-304, this program is another valuable assist to states in their fisheries research and management undertakings and particularly in their effort to realize the full potential of salmon and other anadromous stocks in the face of sometimes adverse circumstances.

For that reason the Association considers continued funding of the grant provisions of the program necessary and appropriate and recommends that $2 million be restored to the Fiscal 1982 NMFS budget.

3. Saltonstall-Kennedy Act: As amended by the American Fisheries Promotion Act (Public Law 96-561), the legislation is a source of substantial grant-in-aid support for qualified projects in fishery education, research and development.

It has the capacity for significantly improving the competitive posture of American seafood products and for expanding the domestic fisheries market.

It has the further advantage, in this period of budgetary constraints, of being financed from a share of the proceeds of duties on foreign fishery imports accumulated in a trust fund and designated for S/K program use rather than having been derived from domestic tax sources.

The legislative mandate for use of those funds is clear and precise and the Association, on that basis and in recognition of the derived benefits, recommends that the $10 million proposed for elimination from the Fiscal 1982 budget be reinstated in full.

(Recommended Funding Decreases)

1. Pribiloff Island Services: This item in the National Marine Fisheries budget covers provision of home heating oil, electric power and other municipal services to residents of the Pribiloff Islands in Alaska. It is the NMFS position that these services are more properly a function of state or municipal government.

This Association concurs in that judgement and recommends deletion of the $5.8 million provided in the NMFS budget for that item.

2. Marine Resources Monitoring Assessment Program (MARMAP): This is the agency's principal activity in the field data collection and stock assessment.

It is the Association's perception, however, that fishery management plans may be accomplished with somewhat less regulation with a reduced requirement for plan development data.

On that basis, we recommend a 10 per cent cut in the $31.7 million MARMAP budget for the year, effecting a reduction of $3.17 million.

3. Regional Fishery Management Councils: The councils are responsible for preparation of fishery management plans under provisions of the Fishery Conservation and Management Act and the Fiscal 1982 budget provides $5.9 million for their operations.

There is a growing feeling, however, that council administrative costs can and should be trimmed by reducing the number of meetings and resultant salary and expenses of members.

The Association's recommendation is for a budget reduction of $1 million for the year.

4. Fisheries Trade Assistance: The Fiscal 1982 budget for NMFS includes a new proposal for a $1.1 million program to expand U.S. Fish exports.

It is the agency's present opinion, shared by the domestic commercial fisheries trade, that the program is not necessary and should be deleted.

The Association concurs in that view and recommends the budget reduction of $1.1 million.

NOTE: The recommended budget increases for NMFS total only $7 million, (exclusive of the Saltonstall-Kennedy trust fund item), whereas recommended decreases total $11 million.

We believe this represents a responsible and successful effort to place focus on the needs and best interests of our members without prejudice to the cause of fiscal constraint.

International Association of Fish and Wildlife Agencies
FEDERAL BUDGET RECOMMENDATIONS
1982

	INCREASES	DECREASES
FISH AND WILDLIFE SERVICE		
Endangered Species	$ 4 million	
Anadromous Fish	$ 3.5 million	
Southeast Wildlife Disease Study	$ 200,000	
Cooperative Fish and Wildlife Research Units	$ 4 million	
Peregrine Falcon Restoration	$ 300,000	
Non-Game Program	$ 3 million	
Animal Damage Control		$ 4 million
Area Offices		$ 1 million
Administration Planning		$ 700,000
Fish Hatcheries		$ 3.5 million
Alaska Refuge Management		$ 5.7 million
Alaska Fishery Assistance on Refuges		$ 1 million
	TOTAL INCREASE - $15 million	TOTAL DECREASE - $15.9 million
U.S. DEPARTMENT OF INTERIOR		
International Convention Advisory Commission (ICAC)		$ 275,000
NATIONAL MARINE FISHERIES SERVICE		
Commercial Fisheries Research and Development	$ 5 million restored	
Anadromous Fish	$ 2 million restored	
Saltonstall-Kennedy Act	$ 10 million restored	
Pribiloff Island Services		$ 5.8 million
Marine Resources Monitoring Assessment Program (MARMAP)		$ 3.17 million
Regional Fishery Management Councils		$ 1 million
Fisheries Trade Assistance	*	$ 1.1 million
	TOTAL INCREASE - $17 million	TOTAL DECREASE - $11 million

*Includes $10 million in trust funds; see explanation in narrative.

LETTER FROM LANNY J. DAVIS AND KATHARINE R. BOYCE, COUNSEL TO SSIE EMPLOYEES

May 7, 1981

The Honorable Lowell P. Weicker, Chairman
Subcommittee on State, Justice, Commerce,
and the Judiciary
Senate Committee on Appropriations
S-146A, U.S. Capitol
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the employees of the Smithsonian Science Information Exchange, Inc. (SSIE), we respectfully submit this letter for your Subcommittee's hearing record to set forth our position on the Department of Commerce Fiscal Year (FY) 1982 appropriations request for the SSIE function.

We understand that the Department of Commerce has requested $1.7 million, a decrease of $330,000 from the FY 1981 appropriation level, to continue the SSIE's operations under contract with the National Technical Information Service (NTIS). The explanation for this reduction is not that it is part of the Reagan Administration's budget-cutting efforts. Rather, it is that the NTIS and SSIE are projected to be self-sufficient by 1984 and, therefore, the appropriation can be reduced annually to meet this objective.

It is our understanding, however, that the assumption of self-sufficiency was based on the plan to integrate the operations of the SSIE and NTIS. The FY 1982 budget request has eliminated the integration plan. Consequently, we now are faced with an appropriation reduction not only founded on an unsupportable assumption, but which will have an adverse impact on the employment rights and benefits of the SSIE employees. They may face salary reductions, shorter work weeks, or job loss without severance pay. While they are willing to carry the same burdens that other public and private employees bear during tight budget periods, SSIE personnel feel they will be distinctly disadvantaged for reasons set forth below.

I. Based on an Outdated Assumption of Severance Pay Coverage, No Funds are Provided for SSIE Severance Payments in the FY 1982 Appropriation Request

As you will recall, last year the Department of Commerce requested approximately $4.3 million in connection with the SSIE function: $2.042 million to fund SSIE operations under contract with the NTIS; and $2.3 million to cover the costs of the NTIS-SSIE integration and of the SSIE's termination as a corporation. This Subcommittee, and subsequently the Congress, approved the $2.042 million to continue SSIE operations, but disapproved the appropriation request for the integration because of a concern to preserve SSIE employment rights and benefits if the employees were converted to civil service status.

Included in the original integration appropriation of $2.3 million, however, was approximately $500,000 to cover SSIE severance payment obligations to its employees in the event of a reduction in force (RIF). Prior to the merger plans, the SSIE was able to fund such obligations from current funds. Yet, there is presently no arrangement, nor any funds, appropriated or otherwise, to make any severance payments whatsoever.

The Department's request for only $1.7 million, rather than $2.042 million, to continue the SSIE operations under contract could necessitate a RIF to reduce operations costs. Most SSIE employees have accrued substantial severance pay entitlements over the years, however. They have a right to be properly compensated if they are separated from the SSIE involuntarily. Since preservation of accrued SSIE employment benefits has been of concern to your Subcommittee, as expressed in Senate Report No. 96-949, we ask you to consider seriously restoration of the $2.042 million budget level appropriated last year for the SSIE contract. This level actually is a reduction in funding since it contains no inflationary factors. Nevertheless, it will provide sufficient funds to cover either severance payment obligations, or personnel salaries so as to obviate the need for severance payments.

II. The Assumption of the Self-Sufficiency of the NTIS and SSIE in the Near Term Should Be Justified

As we have mentioned, the Department of Commerce decision to reduce the appropriation level for the NTIS-SSIE contract is premised on the assumption that both services can be self-sustaining by the end of FY 1984 (*i.e.* capable of meeting all their operating costs with user revenues collected). While the employees do not have access to the documents necessary to evaluate that assumption, we feel the Congress should request the Department of Commerce, *now* that integration is no longer planned, to justify the assumption of self-sustaining SSIE activity by 1984. Unless more money, not less, is available for marketing efforts and other ways to increase aggregate revenues from users, self-sufficiency may not be an achievable goal. Furthermore, if these revenues do not increase substantially, and appropriations continue to drop, NTIS and SSIE may not even exist after 1984.

III. Full or Level Funding of the SSIE Programs is Necessary to Accomplish Properly the Goals of the Department of Commerce

There never has been any question that the SSIE performs valuable and essential services for the federal government. Many evaluations and reports have reached this conclusion, including President Lyndon B. Johnson's Memorandum No. 1776 (Oct. 24, 1964), Comptroller General Report No. B-175102 (Mar. 1, 1972), GAO Report No. 05P-76-9 (Dec. 2, 1975), and GAO Report No. EMD-78-41 (July 14, 1978). Obviously, the employees wish to see the SSIE funded at least at last year's level of $2.042 million so they will not lose their jobs, or their severance pay if they are separated involuntarily from the SSIE. In addition, they would like to meet the Department of Commerce goal of self-sufficiency. Nevertheless, they honestly believe that the current level of funding is essential to achieve that goal.

We hope the Subcommittee will press the Department for justification of its assumption of self-sufficiency, or full cost recovery, before it acts on the FY 1982 appropriation request for the SSIE program. If time does not permit a thorough review prior to markup, we request that the Subcommittee raise the SSIE appropriation to last year's level now, pending further justification. We believe such action is consistent with the concern already demonstrated by the Subcommittee that employment rights of SSIE personnel be preserved.

We appreciate the support you have given the SSIE employees in the past, and hope for the Subcommittee's continued assistance.

Sincerely,

Lanny J. Davis

Lanny J. Davis
Katharine R. Boyce

Counsel to SSIE Employees

STATEMENT OF GILBERT M. PENA, CHAIRMAN, EIGHT NORTHERN INDIAN PUEBLOS COUNCIL

These are critical times for Native American Peoples everywhere and especially for the Pueblos in this region.

Your support and assistance in assuring the continuation of federal funding for the many valuable community economic development programs now implemented and administered by Indian Tribes throughout the nation is vitally important. It is critically and rapidly becoming a question of a fight for survival for many of these tribal economic programs.

In particular, we refer to the proposed federal budget cuts recently recommended by President Reagan's Office of Management and Budget, which include the dissolution of the Economic Development Administration, as well as proposed cutbacks in the Department of Housing and Urban Development (701 Comprehensive Planning Grants) and additional programs through the Community Services Administration - Energy Crisis Intervention Program (ECIP). Documentation concerning the role played by our Office of Planning and Economic Development at the Eight Northern Indian Pueblos Council, as well as a comprehensive listing of the planning, capital improvement and economic development support provided to the Eight Northern Indian Pueblos Council by EDA, HUD and CSA since the tribal organization was founded in 1965 are herewith enclosed as supporting material for you at this time. This will provide you with an overall historical perspective of the work which has been accomplished in the pueblos largely due to the support of these soon to be eliminated programs.

In requesting your assistance to continue our efforts, we remind you of the expressed commitment of the Federal Government of the United States and of the Reagan Administration in particular to uphold the historical status of federal trust responsibility with respect to the Native American peoples of the Nation. It is our feeling that many of the proposed budget cuts, far from representing acts of good faith towards American Indian tribes, will be severely detrimental to the welfare of Native Americans everywhere.

The needs of economically depressed Indian communities such as the Eight Northern Pueblos historically have not been met fully by the specific agencies set up by the federal government exclusively for Native American affairs (BIA, ANA, IHS, etc.). Although the pueblos have received support and in some cases funding assistance from these agencies, many of the most substantial strides made in pueblo development and service delivery over the years have been as a result of the support of many other more general units of the federal government, chief among them EDA, HUD and CSA.

It is our intent with this letter to impress upon you our concern that broad-based and indiscriminate cuts such as those represented by the elimination of entire federal agencies will be disastrous to the specific and worthwhile Indian programs which make up only a small fraction of the total agency funding. It is not our purpose here to propose or defend the total reinstatement back to former levels of funding for agencies such as EDA, HUD and CSA. Rather, we hope to convince you with the help of the enclosed documentation of the viability and importance of some of the Indian programs which have been supported through these agencies and which risk total annihiliation if the proposed cuts go through unmodified. Further, we feel that we are being placed in a particularly unfortunate position due to the short notice we have received concerning the cutoff in our funding. Many of the long-term projects we are involved in currently would risk failure and total loss on years of previous investment because of this sudden retraction of already committed funds by EDA.

All of these concerns call for immediate and decisive action. It is the consensus of Indian tribes and organizations within the State of New Mexico and nationwide to join efforts to make clear to Washington that such a devastating and immediate withdrawal of support is unacceptable and entirely contrary to a productive relationship between the Native Americans and the United States Government.

IN CONCLUSION WE MAKE THE FOLLOWING APPEALS:

1) WE PROPOSE THAT THOSE FUNDS RESCINDED BY PRESIDENT REAGAN FOR ALLOCATIONS WHICH WERE ALREADY COMMITTED FOR THE REMAINDER OF FY81 BE RESTORED TO THE ORIGINAL INDIAN GRANTEES IN ORDER TO REDUCE THE DESTRUCTIVE IMPACT OF SUCH A SUDDEN CUT-OFF IN FUNDING. WITHOUT THESE FUNDS, INDIAN TRIBES FACE A GRAVE ECONOMIC RECESSION AFTER YEARS OF BUILDING A BASIS OF SOME STABILITY AND IMPROVEMENTS IN THEIR TRIBAL ECONOMY.

2) IN THE EVENT THAT A RESUMPTION OF FORMER FUNDING CHANNELS REMAINS IMPOSSIBLE, WE PROPOSE THAT THE FROZEN FUNDS UNDER FY81 BE RELEASED AND CHANNELLED THROUGH ALTERNATIVE, LOCALLY BASED FEDERAL GOVERNMENT AGENCIES (E.G. HUD-REGION IX-OFFICE OF INDIAN PROGRAMS, BIA-ALBUQUERQUE AREA OFFICE, ETC.) IN SUCH A WAY THAT ELIGIBLE AND WORTHWHILE PROGRAMS IN PLANNING, PUBLIC WORKS AND OTHER INDIAN ECONOMIC DEVELOPMENT PROGRAMS WHICH ARE ADMINISTERED THROUGH INDIAN TRIBES AND INTER-TRIBAL ORGANIZATIONS MAY CONTINUE TO RECEIVE SUPPORT AT LEAST THROUGH THE REMAINDER OF THIS FISCAL YEAR.

3) ON A LONG-TERM BASIS, WE PROPOSE THE ADEQUATE SUPPORT OF INDIAN PROGRAMS BE ASSURED, THAT CONSULTATION ON FUTURE MATTERS AND CONCERNS OF OUR PEOPLE BE A PART OF THE POLICY OF CONGRESS AND THE REAGAN ADMINISTRATION.

4) LASTLY, WE PROPOSE THAT THE FEDERAL GOVERNMENT CONTINUE TO UPHOLD ITS COMMITMENT TO THE INDIAN PEOPLE OF THIS NATION.

Again, your strong and timely support in these matters is of vital importance.

THANK YOU.

Statement of John P. Harville, Executive Director, Pacific Marine Fisheries Commission; Irwin M. Alperin, Executive Director, Atlantic States Marine Fisheries Commission; and Charles H. Lyles, Executive Director, Gulf States Marine Fisheries Commission

Mr. Chairman, the three interstate marine fisheries Commissions representing 25 coastal States respectfully urge that your Subcommittee approve continued Federal funding for cooperative State-Federal fisheries research and management programs under the Commercial Fisheries Research and Development Act of 1964 (P.L. 88-309), and thereby reaffirm the Congressional mandate for Federal participation in the conservation and management of shared fishery resources. We are acutely aware of the economic crisis this nation faces, and concur in the need to move aggressively toward a balanced budget. However, we cannot agree with the apparent position taken by the Administration that this budget-balancing process requires scuttling a cooperative State-Federal program which was mandated by the Congress to improve our ability to conserve, develop, and use wisely our commercial fishery resources. Dollars provided to this program by both State and Federal governments should be viewed as investments in future social and economic benefits, and therefore as budget items to be protected as provident uses of public funds.

Continued Federal funding of the P.L. 88-309 program makes good sense from both resource management and cost-effectiveness points of view, for the following principle reasons:

- *State-Federal cooperative projects under this Act carry forward relevant research, monitor the changing status of fisheries, and produce a flow of data essential for continued conservation and management of these valuable natural resources. Particularly for fisheries subject to management under adjacent State and Federal jurisdictions, including most fisheries subject to Regional Council management under terms of MFCMA, State and Federal sharing of program responsibility is essential.*

- *Fisheries resources are biologically renewable, thus funds invested return significant and generally cost-effective social and economic benefits to the nation. Under this Act, Federal dollars generate State and other matching support for fisheries research and development projects of both regional and national significance.*

- *Improved productivity of existing fisheries and development of U.S. capability to harvest, process, and market presently underutilized fishery resources, will return major economic benefits to the U.S. fishing industry. As the U.S. fishing industry fully implements its preferential right to resources within the Fisheries Conservation Zone, the U.S. can achieve a significant reduction in the negative foreign exchange balance by reducing dependence on imported fish products.*

The Magnuson Fishery Conservation and Management Act of 1976 (MFCMA) instituted U.S. management authority over fishery resources out to 200 miles from the U.S. coastline, and established priority access for the American fishing industry to those resources. This landmark legislation has opened the way for massive expansion of domestic fisheries, and for consequent major potential benefits to the U.S. economy in the form of dollars, jobs, and domestic production of needed protein food.

However, full realization of these benefits requires careful husbandry of the natural resources which produce fishery products, and wise management of their exploitation. Therefore MFCMA also established a new regional fishery management authority with regional management planning vested in newly-created Regional Councils. Implementation of those regional plans rests with Federal agencies for the Fishery Conservation Zone (beyond three miles) and with the States inside the three-mile limit of the Territorial Sea.

We believe your Subcommittee will be interested particularly in our assessment of the importance of P.L. 88-309 to our States' continuing abilities to implement regional management of fisheries pursuant to MFCMA and other State-Federal programs of coordinated management. Deprivation of these funds to continue cooperative State-Federal programs on shared fisheries resources means the fishery monitoring, data collection and analysis, and in-process research, now conducted in support of management policies established by Congress under the MFCMA, will be lost. Regional Council funding provides only for drafting and promulgation of fishery management plans; implementation rests with State and Federal agencies.

In our opinion, sacrificing this Federal funding source (P.L. 88-309), which generates matching commitments from the States, is contrary to the national interest, is counter to Congressional intent, and will result in the loss of State-Federal coherency necessary to the success of fishery research undertaken by them.

There can be little doubt of the positive cost-effectiveness of this Federal grant program. Faced periodically with diminishing financial resources at both State and Federal levels, the most cost-effective arrangement has been State-Federal cooperation as demonstrated by programs begun, nurtured, and implemented under P.L. 88-309. This has not been a "giveaway" program; rather, it is a program from which potential benefits to society from Federal investments far outweigh its actual costs. We need to establish the viewpoint that this Federal investment in future productivity can produce significant future payoffs in economic and social benefits to the nation.

In continuing conformance with the original intent of Congress as expressed in the Commercial Fisheries Research and Development Act of 1964 (P.L. 88-309), projects receiving joint Federal-State support under that Act have bolstered State capabilities for development and scientific management of commercial fisheries, have developed much of the technical information upon which regional fisheries management is anchored, and presently are contributing to the on-going fisheries monitoring and research essential for implementation of regional management.

In view of both cost-effectiveness and program necessity, we find the apparent Administration position that these programs are expendable to be both incomprehensible and unacceptable. Surely there are more cost-effective ways to move toward a balanced budget than to cut off a program which inspires Federal-State cooperation for research and development of shared fishery resources. Surely too, this is not the time for the Federal government to repudiate its share of responsibility for implementation of Congressionally legislated mandates for fisheries management and development.

Because these programs are absolutely essential to continuance of State-Federal implementation of regional management--because Federal contributions generate State matching funds plus on-going State commitments to regional management operations--and because the growth of domestic fisheries can contribute significantly to the national economy--we urgently request your leadership to assure continued funding for these cooperative programs under the Commercial Fisheries Research and Development Act of 1964. The Federal government has increasing responsibility for support of coordinated regional conservation and management of marine fisheries resources as an outgrowth of MFCMA. Moreover, Federal dollars invested now in fisheries research and development can pay major future dividends in economic and social benefits to the nation.

Our three primary arguments for a continued State-Federal partnership rest on the need for (1) cooperative research, monitoring, and data collection; (2) positive social and economic benefits resulting from this program; and (3) development of U.S. fisheries:

(1) The P.L. 88-309 program has contributed effectively to the goals set by Congress and firmly established a commercial fishery research and development framework at State and local levels that has been thoroughly demonstrated by Congressional and Administration reviews of program accomplishments. These include:

- *initiation (1966-1977) of 712 projects at an estimated State/Federal (25-75 match) cost of nearly $70 million*
- *extensive contributions for State capabilities to obtain scientific information on stocks of shellfish and finfish, aquaculture, uses of fish byproducts, and development of new products, among other things.*

- *research support for development for cooperative State/Federal management plans for Amercian lobster, Gulf of Maine shrimp, South Atlantic shrimp, surf clams, Dungeness crab, Pacific salmon, and others).*
- *stock assessment and statistical programs for offshore and Continental Shelf species of potential importance to Regional Council plan development.*

Continued Federal participation in the program has provided effective State-Federal coherency necessary to begin, continue, and implement the research supported by these funds.

The advent of MFCMA with its specific management policies resulted in increased demands for fishery research, monitoring, and data development capabilities. State and Federal fishery agency resources have been stretched to their respective limits to meet these demands. Deprivation of Federal support will jeopardize management mechanisms used by Regional Councils to provide advice critical to the fishing industry and for resource protection. The ultimate losers from such an abrogation of Federal responsibility will be the fishery resources along with that portion of our society dependent on them for livelihood and recreation.

(2) Properly conserved and managed fisheries comprise a significant and self-renewing generator of national wealth. Thus Federal funds allocated to enchance resource productivity should be considered investments that will more than pay for themselves in social and economic dividends. The enhancement of State capabilities through P.L. 88-309 may have paid the greatest dividends. Without State-Federal interaction engendered by this Act, many States could not have developed the capability to participate productively in shared management arrangements under new Federal mandates and policies of MFCMA. As NMFS Director Terry Leitzell stated, in part, in his 1980 testimony re P.L. 88-309: "The Act has served well to assist the States to better and more effectively develop and manage their valuable fishery resources "..."projects funded with these State-Federal funds have produced results which have...approval and strong support of the Nation's scientific community as well as the fishing industry".

The annually renewable economic worth of our major commercial fisheries fully justifies the levels of Federal and State expenditures authorized under P.L. 88-309. For example, a combined Federal-State investment of some $670,000 is proposed of FY 1982 under P.L. 88-309, to support monitoring, data collection and analyses, and relevant researches on Pacific groundfish. The annual yield from that fishery is estimated at approximately $175 million--more than 200 times the level of the research and management funds requested. Similarly, the $83,000 project proposed for State of Alaska king and tanner crab population assessments has a trivial cost compared to a recent (1980) valuation of king crab landings at $167 million and tanner crab landings at $51 million.

(3) On a national scale and in the 30 years 1945-1975, the domestic harvest of edible fish declined steadily while total domestic consumption doubled (from approx. 3 1/2 billion pounds in 1945 to more than 7 billion in 1975). That difference between domestic production and domestic demand has been met through imports of foreign fishery products, with a resultant overseas dollar drain ultimately exceeding $2 billion per year. The U.S. Commerce Dept. estimated in a 1976 publication: A Marine Fisheries Program for the Nation, that stocks of fish off our coasts are capable of yielding 20 to 40 billion pounds annually. Yet U.S. fisheries landings averaged only 4.7 billion pounds annually between 1969-73, and even considering increased efforts by foreign fleets, domestic fisheries could be expanded. The potential value of these resources is enormous as demonstrated by the innovative "joint venture" operations being conducted on the Pacific Coast and being considered in the Atlantic and Gulf regions. Using Pacific Coast joint venture operations as an example, the Gulf of Alaska pollock resource will support annual

sustainable harvests of about 150,000 metric tons. Under terms of the MFCMA, if the U.S. industry makes no use of this resource, it must be allocated to foreign fleets. If this occurred the U.S. Treasury would realize about $500,000 in foreign use fees (based on 1978 foreign fee schedules). Because adequate shore-processing facilities have yet to be established in Alaska, the joint venture business arrangement between U.S. harvesters and foreign processors was developed. Here, U.S. catcher boats transfer their fish-laden trawl codends to foreign processing-vessels contracted to receive these U.S. caught fish. Thus, if U.S. vessels harvested the entire pollock resource under this arrangement, their return could total $16.5 million at the 1978 price of $110/ton. If processing and marketing also could be transfered to the U.S. industry, another $40 million could be added to the U.S. economic yield.

This particular joint venture example could produce more than 30 times the value generated from foreign harvest fees alone. Considering other pervasive socioeconomic benefits - added jobs, spinoff income for support services, and value returned on investment capital - their increased flow of dollars through the domestic economy constitutes a direct reduction in U.S. foreign exchange deficits.

In view of these actual and potential benefits to the U.S. economy from Federal investments in American fisheries, we urge that the Congress continue to fund the Federal portion of cooperative State-Federal commercial fisheries research and development projects under P.L. 88-309. These projects contribute to the information base essential for conservation and management of our fishery resources. We pledge the best efforts of our member States to improve that Information base with the goal of achieving continued benefits to the U.S. fishing industry and the U.S. economy.

If additional information or documentation is necessary, please call on any of us or on our member States.

Thank you.

STATEMENT OF THE SOUTHERN FURNITURE MANUFACTURERS ASSOCIATION AND THE CARPET AND RUG INSTITUTE

The Federal Trade Commission appears intent upon finalizing a seemingly innocuous, but, unnecessary, vague, and unduly burdensome proposed care labeling regulation. Generally, the FTC proposal, which was open for only "technical comments" until March 6, 1981, declares it to be an "unfair or deceptive act or practice" for upholstered furniture, carpet or rug manufacturers to fail to provide an easily found label which will last the lifetime of the product, and which will prescribe a cleaning method and cleaning agent adequate to effect the care necessary for the "ordinary use and enjoyment of the product". Also, "warnings" against the use of a harmful cleaning method or agent, which might reasonably be expected to be used with the prescribed method, must generally be outlined on the label.

Numerous organizations and members of Congress submitted comments which were in opposition to the proposal. Some of the key points of those members of Congress and organizations are briefly discussed below:

- There have been insufficient complaints registered with the FTC and the affected industries to warrant such a proposed regulation.

- The FTC is considering this proposal notwithstanding the fact that a significant growing percentage of the carpet, rug, upholstered furniture and piece goods industries are providing consumer care information for their products on a voluntary basis. Contrary to the proposed FTC regulation, such information is directed to the specific characteristics and care needs of each product on a cost effective basis (e.g., spot-cleaning information provided by the upholstered furniture and carpet manufacturers). On the other hand, the FTC proposal would cost more, limit the options of consumers and provide less useful information to the consumer.

- For many manufacturers, the FTC proposal would require that the care label remain attached throughout the life of the product, yet be in a visible place. Thus, those manufacturers would have the difficult task of placing the label so as not to detract from the aesthetic qualities of the product. Probably the FTC thought it was covering that problem by allowing an exemption to be issued upon written petition. However, the FTC would be flooded with numerous written petitions for the exemption, which could not possibly be granted in a timely manner. The manufacturing process would then be at the mercy of the FTC. If the exemption is granted, one option provided by the FTC is the use of a "hang tag". However, the proposal would require the hang tag to be made so it would still be on the product when bought by the Consumer. Such a requirement would virtually be impossible for the manufacturer to monitor. Also, the FTC proposal would require that the hang tag stay fastened and legible throughout the useful life of the product. Manufacturers could not meet such a requirement, nor would it be practicable.

- Monitoring compliance with the regulation by the FTC is also of concern. The proposal could conceivably result in the creation of a whole new enforcement wing within the Commission. This is hardly congruous with the federal budget-cutting, regulation-cutting spirit of the new Administration which has received widespread endorsement throughout our country.

- Manufacturers are subject to possible legal action if care label terms other than those in the FTC's "Glossary of Standard Terms", are used.

- Even the scope of the rule is vague. For example: the failure of the FTC to simply include a definition of the term "upholstered furniture" would require manufacturers of many products to speculate on the applicability of the new regulation to them.

- The impact of this burdensome and vague proposed regulation upon small manufacturers would likely be disastrous.

- For certain manufacturers the proposal requires delivery of labels to the ultimate consumer. Manufacturers rarely deal directly with the consumer, and removal or loss of such labels through the distribution process could occur. Yet, the FTC proposed regulation would cause affected industries to face charges of having committed an unfair or deceptive act or practice if the labels were not delivered to consumers.

The Southern Furniture Manufacturers Association and The Carpet and Rug Institute urge the Subcommittee to take whatever action is necessary in preventing the applicability of this proposed regulation to upholstered furniture and carpet or rug manufacturers.

Letter From Ned Gerber, Natural Resource Planner, the County Commissioners of Queen Anne's County, Centreville, Md.

April 10, 1981

The Honorable Charles McC. Mathias, Jr
Room 358
The Russell Building
Washington, D.C. 20510

Dear Senator Mathias:

I am writing to urge you to support Maryland's Coastal Zone Management and Sea Grant programs. As the budget situation stands now, both programs are scheduled to receive "o" funding as of July, 1982.

Both programs are valuable for many reasons which I will list below. If they must be cut, shouldn't they be phased out gradually rather than totally eliminated in one year?

The Sea Grant and Coastal Zone Management programs:

1) Provide valuable public education information about the Chesapeake to its many and varied user groups.

2) Provide research into the many problems facing the bay area (striped bass, dredging, congestion, land use, etc.).

3) Provide an invaluable forum in which all the user groups get together at meetings and discuss issues, exchange ideas, and arrive at workable solutions. This is much better than the traditional "pot shotting" that is seen on many environmental issues.

4) Provide assistance at the local level to governments, watermen, etc.

5) Provide a scenario in which the bay's resources can be used wisely.

Thank you for considering this matter.

Sincerely,
Ned Gerber

Ned Gerber
Natural Resource Planner

Statement of the Oregon Department of Fish and Wildlife

The Oregon Department of Fish and Wildlife requests this committee's support for a $777,000 add-on to the 1982 fiscal year budget of the National Marine Fisheries Service to allow the Department's eight Columbia River hatcheries to operate at full level. NMFS historically has provided most of the operating funds for these fish production facilities.

The Columbia River at one time was the world's greatest producer of chinook salmon. These great salmon runs were the result of natural spawning. Civilization has accounted for great losses to the Columbia River salmon because of dams, irrigation, logging, pollution, etc. The Corps of Engineers and public utility districts have assumed direct responsibility and provided mitigation programs for specific dam projects. The federal government through the National Marine Fisheries Service (NMFS) and the Mitchell Act have assumed funding responsibilities for many other production and research programs, however, not related to specific federal dam projects. These NMFS programs have for years recognized the national and international significance of the Columbia River salmon resource.

The salmon allocation problems between fishermen that have occurred in recent years from federal court decisions quantifying treaty Indian rights have been greatly magnified by the depleted condition of the Columbia River salmon runs. These user conflicts will be further aggravated if the federal government reduces its commitment to provide full hatchery production at these eight facilities.

In 1980 Congress recognized the national importance of the salmon and steelhead fish resource by enacting the Northwest Fish Enhancement Act which authorizes over $30 million to the Columbia River for new fishery enhancement programs. This action was a positive step but new programs implemented under the act cannot provide as immediate or cost effective benefits to the resource as can be achieved by fully utilizing the existing hatchery facilities for maximum fish production.

Fish produced in these hatcheries contribute to the sport and commercial fisheries in the ocean off the coasts of Alaska, Canada, Washington, Oregon, California, and to the commercial, sport, and Indian fisheries in the Columbia River. Chinook salmon from the Columbia River hatcheries are directly and significantly involved in the current international negotiations with Canada. The catch of Columbia River chinook by Canadians is used to offset the catch of Canadian salmon by US citizens.

When the adult salmon return to the hatcheries, they are killed and spawned. Some are not needed for spawning and these are also killed. All salmon carcasses are sold on bid. Receipts from the sale of salmon carcasses from Columbia River hatcheries are returned to the program to supplement NMFS and other funding.

In fiscal year 1980, we were aware of serious problems with the NMFS funding levels for the hatcheries. Inflation continued and increased. NMFS officials were requested to provide additional funds above the basic level funding program. The Department also immediately restricted maintenance at the hatcheries to only emergency-type repairs. By this action and use of funds from the sale of salmon carcasses, the hatcheries were able to operate at full production level through fiscal year 1980.

In fiscal year 1981, the funding problems became more severe. The Department again requested additional funds ($532,000) from NMFS through Oregon's Congressional Delegation. After about 11 months of trying for these additional funds and with no definite answer, we made the decision to release some fish early and reduce the staff at several facilities. By continuing the program with only minor maintenance, reducing staff and fish production, the 1981 fiscal year additional funds needed have been reduced to $265,000. Efforts are continuing by Senator Mark Hatfield and Congressman Les Aucoin, to have the $265,000 added to NMFS's 1981 fiscal year budget for our use.

NMFS has again informed us that basic level funding will be provided in fiscal year 1982. We expect the funds provided by the sale of salmon carcasses to be reduced from previous years. An add-on of $777,000 is required to return the eight Columbia River hatcheries to full production.

Each year the consequences of deficit funding become more serious. If the $777,000 is not recieved for fiscal 1982, the staff reduction of 7 permanent positions will be increased by 2 more for a total of 9. Coho smolt production will be cut from 7.2 million to 4.35 million (40%), fall chinook production from 32.9 million to 10.8 million (67%) and steelhead from 710,000 to 390,000 (45%). These reductions will have significant implications to all user groups, sport and commercial, both in the US and Canada.

The Columbia River hatcheries are large, well designed, functional units. Most are about 25-30 years old and require substantial annual maintenance to keep in efficient operating condition. The fish production has been a long time proven program with very substantial benefit-cost-ratios to the fishermen of the NW United States.

I respectfully request your support in providing $777,000 add-on funds to the NMFS fiscal year 1982 budget to allow this successful program to continue.

STATEMENT OF CHARLES H. LYLES, EXECUTIVE SECRETARY, LOUISIANA SHRIMP ASSOCIATION

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE ON STATE, JUSTICE, COMMERCE AND THE JUDICIARY, LADIES AND GENTLEMEN. THANK YOU FOR PERMITTING ME TO EXPRESS THE CONCERN OF THE LOUISIANA SHRIMP ASSOCIATION TO THIS COMMITTEE.

THE LOUISIANA SHRIMP ASSOCIATION IS AN ORGANIZATION OF PERSONS ENGAGED IN THE PRODUCTION, PROCESSING AND MARKETING OF SHRIMP. THE EX-VESSEL VALUE OF THE LOUISIANA CATCH IS WORTH OVER $100 MILLION DOLLARS. THERE ARE APPROXIMATELY 25,000 LOUISIANA FISHERMEN WHO EARN THEIR LIVING HARVESTING THIS ANIMAL EACH YEAR AND ANOTHER 6,000 PERSONS FROM OUT OF STATE WHO FISH IN LOUISIANA WATERS AND EARN THEIR LIVING FROM THIS RESOURCE. THERE ARE APPROXIMATELY 4,800 PERSONS ENGAGED IN PROCESSING AND MARKETING THE CATCH. THERE ARE EQUALLY AS MANY PERSONS ENGAGED IN SUPPLY AND SHIPBUILDING WHO ALSO EARN THEIR LIVELIHOOD FROM THIS INDUSTRY, MAKING IT ONE OF THE MAJOR SOURCES OF ECONOMIC STABILITY IN THE COASTAL REGIONS OF THE STATE OF LOUISIANA.

MEMBERS OF THE SHRIMP INDUSTRY IN LOUISIANA HAVE WELL OVER A BILLION DOLLARS INVESTED IN HARVESTING AND PROCESSING EQUIPMENT. WE ARE THEREFORE INTERESTED IN SEEING THAT THE RESOURCE IS MAINTAINED AT ITS MAXIMUM YIELD.

FISHERY RESOURCES ARE UNIQUE IN THAT PEOPLE ARE REQUIRED, IF THEY ARE TO PARTICIPATE IN THE HARVESTING, TO INVEST VAST SUMS OF MONEY IN EQUIPMENT TO HARVEST A RESOURCE OVER WHICH THEY HAVE NO, NOR CAN THEY EVER ACQUIRE, CONTROL OF. THE LOUISIANA SHRIMP ASSOCIATION HAS CONSISTENTLY SUPPORTED THE UPGRADING OF SHRIMP RESEARCH AT A STATE AND NATIONAL LEVEL. WE HAVE DONE THIS BY SUPPORTING APPROPRIATIONS WHICH THE

STATE AND FEDERAL AGENCIES DEEMED NECESSARY TO CARRY ON THIS IMPORTANT WORK. WE HAVE ALSO SUPPORTED PROMISING STUDENTS WITH SCHOLARSHIP FUNDS. WE HAVE CONSISTENTLY SUPPORTED THE SCIENTISTS IN OUR OWN STATE IN THEIR ENDEAVOR TO SCIENTIFICALLY MANAGE THE RESOURCE. IN SUMMARY THEN WE BELIEVE OUR ASSOCIATION TRACK RECORD SUPPORTING SCIENTIFIC MANAGEMENT BY PROFESSIONALS IS AS GOOD AS ANY IN THIS NATION. WE HAVE RECENTLY BECOME ALARMED AT SOME OF THE BUDGET REDUCTIONS, BUT MORE THAN THAT WE ARE DEEPLY CONCERNED WITH PRIORITIES WITHIN NATIONAL MARINE FISHERIES SERVICE AND WITH THEIR ABILITY TO PROPERLY ADMINISTER THEM WITHOUT BIAS AND WITHOUT EMPIRE BUILDING.

LET ME EXPLAIN. ON TUESDAY, MARCH 10, 1981, THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, THE PARENT AGENCY FOR NATIONAL MARINE FISHERIES SERVICE, RELEASED THE PROPOSED BUDGET FOR 1982. PAGE 6 OF THAT DOCUMENT LISTS AT THE TOP OF THE PAGE AN ITEM AS FOLLOWS: (QUOTE)

OCEAN FISHERIES AND LIVING MARINE RESOURCES

FY 1982 REQUEST	$109.3M
INCREASE	2.0M
DECREASES	9.7M
CHANGE (-)	7.7M

"AN INCREASE OF $2.0M IS REQUESTED TO FUND DEVELOPMENT OF SOCIO-ECONOMIC AND HARVESTING DATA WHICH WILL BE USED IN THE DEVELOPMENT OF REGIONAL FISHERIES MANAGEMENT PLANS. THIS EFFORT WILL BE DIRECTED AT MAJOR FISHERIES IN THE SOUTHEAST AND IN THE CENTRAL AND WESTERN PACIFIC.

DECREASES OF $9.7M RESULT FROM PROPOSED REDUCTIONS IN FISHERY RESEARCH ACTIVITIES ($.4M); MARINE MAMMAL CONSERVATION ($.1M); SEA TURTLE RESEARCH ($.1M); PRIBILOF ISLAND ACTIVITIES ($.1M); AND FROM ADDITIONAL PROPOSED REDUCTIONS IN ANADROMOUS FISHERIES GRANTS ($2.0M); AQUACULTURE RESEARCH AND DEVELOPMENT ($2.0M); AND FISHERIES GRANTS TO STATES ($5.0M), WHICH ARE PROPOSED AS PART OF THE OVERALL EFFORT TO ACHIEVE ECONOMIES IN THE FEDERAL BUDGET.

THE ADDITION OF PROPOSED REDUCTIONS IN GRANT PROGRAMS AND IN THE AQUACULTURE PROGRAM, AND THE DELETION OF A PREVIOUSLY REQUESTED INCREASE FOR FISHERIES EXPORT TRADE ACTIVITIES

($1.1M), ARE THE MAJOR CHANGES IN THIS BUDGET ACTIVITY FROM THE JANUARY BUDGET." (END QUOTE)

EXCEPT FOR THE 88-309 AND 89-304 FUNDING (WHICH AMOUNTS TO ABOUT 7 PERCENT OR $7.0M), THE REDUCTION AMOUNTS TO ABOUT 2 PERCENT IN THE OVERALL BUDGET. TO COMPENSATE FOR THIS 2 PERCENT REDUCTION, NATIONAL MARINE FISHERIES SERVICE HAS DECIDED TO CLOSE A MAJOR RESEARCH STATION, THE LABORATORY AT GALVESTON, TEXAS WHERE ALL FEDERAL SHRIMP RESEARCH IS CONDUCTED. THIS LABORATORY IS LOCATED IN THE PROXIMITY OF 80 PERCENT OF THE RESOURCE THAT IS HARVESTED WITHIN U.S. WATERS. WE BELIEVE THIS DRASTIC ACTION IS UNCALLED FOR AN WE WOULD LIKE THE SUBCOMMITTEE TO RECONSIDER USING ANY FUNDS TO CLOSE OUT SHRIMP RESEARCH AT THE GALVESTON LABORATORY TO ANY EXTENT BELOW THE PRESENT LEVEL. WE BELIEVE THIS CAN BE DONE WITHOUT ANY INTERRUPTION IN RESEARCH OR SERVICES. FOR EXAMPLE THE ABOVE DATA ON OF $109.3M. HOWEVER, TO THIS MUST BE ADDED $1.0M, WHICH NATIONAL MARINE FISHERIES SERVICE OBTAINS FROM AN ITEM SHOWN ON PAGE 10, IN THE DOCUMENT ISSUED MARCH 10, 1981, ENTITLED EXECUTIVE DIRECTION AND ADMINISTRATION, MAKING THE BUDGET $110.3M. A DECREASE OF $9.7M IN THE REAGAN BUDGET FIGURES OUT TO BE LESS THAN A 9 PERCENT CUT. SINCE THE GRANT-IN-AID PORTION OF THIS BUDGET (88-309 AND 89-304 FUNDING) IS NOT PART OF THE NATIONAL MARINE FISHERIES SERVICE OPERATING BUDGET THE ACTUAL CUT IN THE NATIONAL MARINE FISHERIES SERVICE OPERATING BUDGET AMOUNTS TO ONLY ABOUT 2 PERCENT. THIS IN NO WAY IMPLIES THE NEED TO REMOVE A MAJOR RESEARCH FACILITY FROM A MAJOR FISHERY AREA. IT SIMPLY IS IMPOSSIBLE TO DEMONSTATE THIS NEED WITH AN OVERALL 2 PERCENT FUND REDUCTION. FURTHERMORE, WE BELIEVE THAT WITH SOME PRUNING OF FAT, AND ELIMINATION OF DUPLICATION NATIONAL MARINE FISHERIES SERVICE CAN DO EVERYTHING THEY NEED TO DO WITH THE 9 PERCENT OVERALL CUT.

WE KNOW FOR EXAMPLE THAT DUPLICATE ADMINISTRATIVE SERVICES EXIST IN THE SOUTHEAST FISHERIES CENTER IN MIAMI AND AT THE REGIONAL OFFICE IN ST. PETERSBURG. WE KNOW THAT GOOD ADMINISTRATION OF NATIONAL MARINE FISHERIES SERVICE PROGRAMS WOULD ELIMINATE THIS AND PROVIDE SUFFICIENT FUNDS TO CARRY

ON NEEDED PROGRAMS. WE ASK THAT YOU HELP US IN THIS ENDEAVOR AND THAT THE GALVESTON LABORATORY BE KEPT OPEN.

THIS ASSOCIATION WOULD NOT TAKE SUCH A STRONG POSITION IN THIS MATTER WERE IT NOT FOR THE FACT THAT THE STATUS OF KNOWLEDGE IN THE GULF, SOUTH ATLANTIC AND CARIBBEAN IS WORSE THAN IN ANY OTHER REGION. THIS CAN BE VERIFIED BY NATIONAL MARINE FISHERIES SERVICE OWN INFORMATION SHEET, A COPY OF WHICH IS ATTACHED, IN THE FORM OF FIGURE 1. STATUS OF ASSESSMENT INFORMATION FOR MANAGEMENT OF FISHERY RESOURCES. NO OTHER SECTION HAVE THEY NEGLECTED SO BADLY.

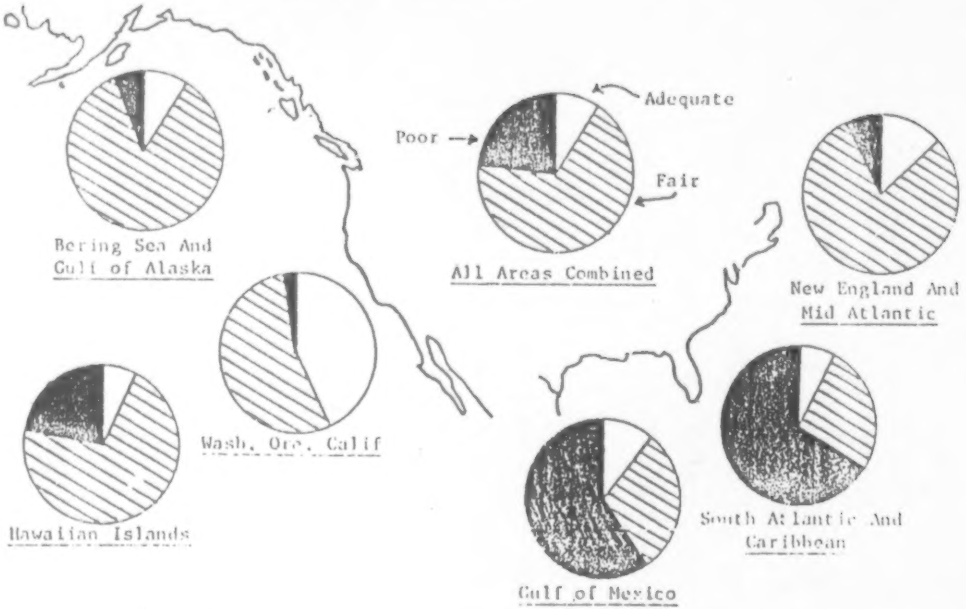
FINALLY, WE ARE CONCERNED ABOUT THE TOTAL LOSS OF 88-309 FUNDING WHICH IS USED FOR RESEARCH AND RESOURCE ASSESSMENT IN SCIENTIFICALLY MANAGING THE SHRIMP FISHERY. THE USE OF THESE FUNDS HAS ENABLED THE STATE TO EMPLOY WELL TRAINED SCIENTISTS WHO HAVE OVER THE YEARS COLLECTED VAST QUANTITIES OF DATA ON WATER TEMPERATURE, SALINITY AND OXYGEN CONTENT AND THE RELATIONSHIP OF THESE ENVIRONMENTAL FACTORS TO SURVIVAL OF THE YOUNG SHRIMP. THESE DATA HAVE ENABLED THE STATE TO OPEN THE SPRING SEASON AT A TIME WHICH WILL PROVIDE THE MAXIMUM HARVEST AND YET PREVENT MINIMUM DESTRUCTION OF SMALL UNDERSIZED ANIMALS. THE MANAGEMENT OF THE SHRIMP RESOURCE IN THIS MANNER HAS MEANT MORE JOBS AND MILLIONS OF DOLLARS MORE IN ADDED INCOME FROM THE RESOURCE. WE THEREFORE SINCERELY REQUEST THAT YOU MAKE EVERY EFFORT TO ELIMINATE UNNECESSARY DUPLICATION OF SERVIGES BEFORE ELIMINATING ANY VITALLY NEEDED AND ECONOMICALLY IMPORTANT PROJECTS SUCH AS 88-309. WE BELIEVE THAT IF YOU TAKE A CLOSE LOOK YOU WILL FIND MORE THAN I HAVE SUGGESTED.

I SHALL BE HAPPY TO ANSWER YOUR QUESTIONS.

Fig. 1: STATUS OF ASSESSMENT INFORMATION FOR MANAGEMENT OF FISHERIES RESOURCES

Assessment Information Elements

- Resource distribution and abundance
- Yield recruitment-models (MSY)
- Stock/environment-models
- Predictions
- Catch per unit effort



NOTE: Adequate is defined as the minimum level of knowledge needed to determine status of stocks.

STATEMENT OF WILLIAM YALLUP, THE YAKIMA INDIAN NATION OF WASHINGTON STATE

Mr. Chairman and distinguished Members of the Subcommittee, my name is William Yallup. I am an elected representative of the Yakima Indian Nation of southern central Washington. In that capacity I am a member of the Tribal Council and I serve as Chairman of the Council's Fish and Wildlife Committee. I also am the representative from my Tribe to the Columbia River Inter-Tribal Fish Commission, a coalition of four Indian Tribes with fishing rights in the Columbia River Basin. The concerns I will express today are shared by all Members of the Commission.

The Yakima Basin is an area that was second only to the Snake River in contributing to the Columbia River's great salmon and steelhead runs. The Yakima's runs once totaling 500,000 fish annually have now dwindled to 5,000 or less. On the Columbia itself, runs once in the millions have dwindled to approximately 400,000. Equally alarming statistics are evidenced along the coastal areas of Washington and Oregon and in the Puget Sound Area.

For many thousands of years, our people fished the Columbia River and its tributaries for our religion, our subsistence and our commerce with other tribes and later with the white settlers. Anadromous fish have been a staple and mainstay of our culture. In 1855, we signed treaties in which we gave up millions of acres of our lands in return for certain guarantees, including our right to fish "At all usual and accustomed grounds and stations....In common with all citizens of the territory."[1] For the past two to three decades, we have seen our fish runs shrink due to: the destruction of spawning beds by timber harvests; decreased instream flows because of irrigation; the difficulties encountered by migrating fish in dealing with many large hydroelectric dams on the Columbia and its tributaries; the fishing capacity of non-Indian fishermen far in excess of that required to harvest the available resource and an uncoordinated and politically oriented management system all jeopardizing the very existence of some of our important stocks. In the same year our fishing rights were affirmed by the Supreme Court (1979), we were told that the runs were in such bad shape that my tribe was required to close down even our subsistence fishery for spring chinook on the Yakima River.

In light of these problems, the 96th Congress enacted what is now P.L. 96-561, the Salmon and Steelhead Conservation and Enhancement Act of 1980. This Act, if properly and fully implemented and combined with the fishery protection provisions of the Northwest Regional Power Bill (The Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-561), could do much to substantially resolve many of these problems and return our salmon and steelhead runs to some semblance of their previous magnitude.

The importance of P.L. 96-561 is well summarized in the findings section of the Act itself:

> "The stocks of salmon and steelhead which originate in the rivers of the conservation areas constitute valuable and renewable natural resources. Many groups of commercial, recreational, and treaty fishermen have historically depended upon these stocks of fish for their livelihoods and avocations. These fishery resources contribute to the food and supply and economic health of the Pacific Northwest and the Nation as a whole, provide valuable recreational experiences for thousands of citizens from various parts of the United States, and represent a central element of the cultures and economics of Indian Tribes and the citizens of the Pacific Northwest."

As the legislation passed so late in the 96th Congress, the Carter Administration did not have the time to fit it into the

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[1] Treaty Negotiated by Isaac Stevens with the Yakima Tribe, June 9, 1855, 12 Stat. 951

Budget process and subsequently, no mention of funding for the Act is found in the Reagan or Carter Budgets.

The Congressional Committees with jurisdiction over the legislation, the House Merchant Marine and Fisheries Committee and the Senate Commerce Committee, in their recommendations to their respective Budget Committees have recommended that this legislation be funded in the F.Y. 1982. Additionally, the Members of the Oregon and Washington Congressional delegations in the House and Senate are on record as supporting the Act. I would like to include for the record the testimony of the Oregon Department of Fish and Wildlife. I am also submitting for the record a letter of support from Governor Atiyeh of Oregon and I was accompanied on the House side by Mr. Frank Haw, the operations coordinator for the Washington Department of Fisheries. The fact that Mr. Haw and I testified together on the same side of an issues relative to fishing is a feat in itself, and should probably be added to any list of benefits that will occur under this legislation. Mr. Chairman, you may not be aware of the history of the relationship between the State of Washington and the Tribes over fishing rights, but the feelings have been somewhat less than harmonious.

Part B, Sections 110 and 112 call for the establishment of the Salmon and Steelhead Advisory Commission and the establishment of a program to provide for coordination grants, respectively. Section 114 authorizes the Congress to appropriate $ 3 million for Part B. I am requesting that this committee fund the $3 million authorized. It is a relatively small amount of money that has the potential for producing results worth far more than that figure.

The Advisory Commission, working through coordination grants,. is to prepare and submit to the Secretary of Commerce and to the Congress a comprehensive management and enhancement plan. The approval of this plan by the Secretary is a pre-condition for the funding of enhancement projects as authorized under Part C of this title. We view Part B as an incentive for cooperation among all the management entities.

For the last few years, the Columbia River Treaty Tribes have met with the State and Federal fishery agencies in an effort to identify management issues and resolve them. Funded only temporarily by the Pacific Northwest Regional Commission, these discussions have identified notable areas of agreement between our agencies while clarifying the issues upon which we do not agree. These issues are complex and, because of the overlapping jurisdictions of our agencies, they must be developed in a formal setting against the backdrop of other authorities including our treaty rights and Federal and State law. The Advisory Commission can be such a setting.

In recent years, most of our disagreements were aired in the courts on a case-by-case basis. Now, with the passage of the Enhancement Act, we have the opportunity to seek agreement outside of the courts on the elements of a management structure which can benefit all of our fishermen who, for too long, have had to sit on our riverbanks watching important runs die out.

Should this Committee agree to appropriate the $3 million authorized for Part B, we would recommend that report language be included by the Committee making clear that the money is intended to assist the State and Tribal fishery agencies in carrying out their obligations under the Act. Section 112 clearly states that "(Coordination) grants should be made available for use by the State of Washington, The State of Oregon, appropriate tribal coordinating bodies, or any joint governmental entity established......For coordinating management or enforcement, or preparing the reports and plans described in Parts B and C." A key to the success of this whole Act is local decision making by requiring that the States and Tribes get together to begin the process of coordination necessary for development of a management structure. The emphasis should be upon the coordination grants to the States and Tribes with clerical and administrative support coming from the National Marine Fisheries Service. Both the States and tribal coordinating bodies have significant access to technical, biological and legal experts in the fisheries field. The NMFS will have significant input into the Commission in various ways, not the least of which will be through its voting representative on the Commission.

We are hopeful that this legislation, which has been many years in the making, will be a vehical for protecting and enhancing this most valuable of our Nation's resources.

We would like to go on record as requesting this Committee to restore funding to three other areas under its jurisdiction. First is the Anadromous Fisheries Grant Program, particularly those provisions in P.L. 89-304 that are used for the coded wire tags recovery programs. Thousands of fish have already been tagged at hatchery and research stations up and down the coast and throughout the Columbia River system. The information gained from this tag recovery program will prove invaluable in determining the catch rate and distribution of Columbia River stocks in the Ocean.

Furthermore, and unrelated to fisheries issues, we request that you support funding for the Legal Services Corporation, a program which has given Indian Tribal members living in isolated rural communities, access to irreplaceable legal aid in Tribal forums as well as State and Federal courts for the first time.

We also support continued funding for the Economic Development Administration, an agency which contains a special Indian division to help Tribes combat severe economic problems through special projects and loan guarantees. The need for funding to both the LSC and the EDA will be addressed by other Indian organizations during this Subcommittee's present set of hearings.

APPENDIX I

TESTIMONY OF FRANK HAW, OPERATIONS COORDINATOR, WASHINGTON STATE DEPARTMENT OF FISHERIES, BEFORE THE HOUSE APPROPRIATIONS SUBCOMMITTEE ON COMMERCE

May 5, 1981

Mr. Chairman, members of the committee: my name is Frank Haw and I am Operations Coordinator of the Washington State Department of Fisheries.

We are most grateful to the Yakima Tribe, and this subcommittee, for allowing us to share the short time originally allotted to the tribe for testimony. The fact that the Yakima people were willing to do this was not a surprise to us because we are learning to share - not only time but fish and responsibility as well. Together, we and the tribes are developing a more productive working relationship that has already culminated in salmon restoration projects and significant management agreements. However, much remains to be done and we need your help to develop the blueprints for the big job ahead. We are here to communicate the absolute need for long-term management and enhancement planning moneys which Congress authorized this past year.

Last December, after many months of hard work by the Washington State delegation and their supporters here and at home, President Carter signed P.L. 96-561 into law. On that memorable occasion, most of us associated with, and dependent upon, the anadromous fish resource were elated. The events leading up to that day in December, and indeed since, have clearly indicated that former litigants are prepared to work for the salmon and steelhead resource rather than fight over the last fish. Few if any of us working on the problem would have considered that the initial funding of the Act, necessary to develop the Salmon and Steelhead Advisory Commission and to plan for future salmon and steelhead enhancement, was in doubt.

One cannot help but recognize the move toward fiscal conservatism as it exists throughout the nation and in Washington State. The citizens of our state clearly support this trend and our Fisheries budget, as well as those of other State agencies, will be lean for the 1981-83 biennium. Nevertheless, we are concerned enough about this resource that for the next two years our State legislature had appropriated $17.1 million to operate our State salmon hatcheries and $9.2 million more to fund the other essential programs required to manage the salmon resource for another two years. Most of you may know that in 1977 the State of Washington committed $32 million in State capital funds for new salmon enhancement (this is recognized in P.L. 96-561). What you may not know is that our just-concluded 1981 session added $2.2 million for more salmon enhancement facilities. That brings the total State expenditures for salmon programs, for the 1981-83 biennium, to $28.6 million.

The State of Washington is committed to implementing the Federal Court interpretation of the 1855 treaties the United States made with the Northwest Indian tribes. Under difficult circumstances we have come a long way and we are doing our best. Now we need your help. The appropriation of $3 million, about 10% of the State's most recent appropriation, to establish the Salmon and Steelhead Advisory Commission and begin comprehensive enhancement planning is essential to ensure the sound management of our important salmon and steelhead resources long into the future.

APPENDIX II

March 31, 1981

The Honorable Ron Wyden
1440 Longworth House Office Building
Washington, DC 20515

Dear Ron:

As you may be aware, PL 96-561 provides for the conservation and enhancement of salmon and steelhead on the Columbia River and its tributaries as well as in Western Washington. This legislation also provides for the establishment of a salmon and steelhead advisory commission for the purpose of developing a coordinated management structure and authorizes $3 million in coordination grants to enable state and tribal fishery agencies to carry out their responsibilities on the commission.

Through a contract with the Pacific Northwest Regional Commission due to expire on March 31, 1981, state, federal and tribal fishery agencies have been engaged in a planning process which has identified issue areas for further discussion and potential resolution. Columbia River fishery agencies have also identified significant areas of agreement in this process particularly in the area of flow and passage needs.

If we are to restore the once-great stocks of Columbia River salmon to some measure of their former abundance, this planning process must be encouraged to continue. PL 96-561 offers the means to accomplish this goal.

For these reasons, I would like to request your support for both supplemental appropriations during 1981 and full appropriations for coordination grants under Part B, Section 112 of the Act for fiscal year 1982.

Sincerely,

Victor Atiyeh
Governor

APPENDIX III

May 1, 1981

Honorable Neal Smith
Chairman
House Appropriations Subcommittee
on State, Justice, Commerce and
the Judiciary
H-309
Capitol Building
Washington, D. C. 20515

Dear Mr. Smith:

The Oregon Department of Fish and Wildlife joins with the Washington Department of Fisheries and the Confederated Tribes and Bands of the Yakima Indian Nation in requesting your subcommittee's favorable consideration of $3 million for coordination grants during fiscal year 1982 under Part B, Section 112 of PL 96-561.

During the past four years, our Department participated in discussions aimed at resolving Columbia River management issues. These discussions among state, federal and tribal entities have resulted in notable areas of agreement and have identified areas where further discussions and negotiation could prove fruitful in restoring what were once the largest runs of salmon in the world.

Passage of the Northwest Salmon and Steelhead Conservation and Enhancement Act gave Congressional recognition to the need to continue our discussions and to resolve our disagreements in order to ensure that future federal fish enhancement investments in the Columbia River fishery bore favorable benefits. Approval of the $3 million authorized by this Act provides the means to reach this goal.

We therefore urge you and your colleagues to approve this request and assist in reversing the decline of the salmon and steelhead fishery on the Columbia and its tributaries, one of the Northwest's and the Nation's most important natural resources.

Sincerely,

Robert U. Mace
for John R. Donaldson, PhD
Director

STATEMENT OF ROBERT D. O'BRIEN, PRESIDENT, U.S. TRADEMARK ASSOCIATION

Mr. Chairman, thank you for the opportunity to appear before your committee. My name is Robert D. O'Brien and I am Corporate Trademark Counsel for Bristol-Myers Company, a position I have held for ten years. I currently serve as President of The United States Trademark Association.

As this is USTA's first appearance before your subcommittee, I would like to begin with some brief background on the Association. From its founding in 1878, USTA has become the largest and only U.S. organization with the sole purpose of protecting the interests of trademark owners and the consuming public who rely heavily upon marks in making their purchasing decisions. Today, USTA has a membership of approximately 1500 trademark owners and those who serve them.

It is because timely and quality Trademark Operations within the PTO are in the best interests of trademark owners and the general public that USTA has requested this time to testify. In this respect, it cannot be over-emphasized that providing the public with an effective federal trademark registration system is a legislatively-mandated federal service; the PTO is not just "another agency," but one charged with a public trust and commitment.

Over the past several years, the trademark community has become increasingly alarmed by the deteriorating conditions of Trademark Operations in the PTO. Currently, it takes approximately twenty-five months for an application for the registration of a mark to be processed. This translates into a delay of more than two years before a firm interested in marketing a new product or service in interstate commerce can launch its marketing program with reasonable assurance that the name chosen to identify the product or service will not confuse or mislead the public. The impact this government-created delay has on an economy that has as one of its goals increased productivity is obvious.

Before directing my comments to the proposed FY 1982 PTO budget, two points must be made. First, The United States Trademark Association is eager to work with the Congress, its committees and the appropriate government agencies to determine the best solutions to the problems confronting Trademark Operations. Second, USTA is deeply gratified by the awareness within the Administration that present conditions in Trademark Operations demand additional appropriated funds during a period of time when budget cuts are the rule. The inherent commitment contained in this budget request and the first-hand experience we have had in dealing with Commissioner of Patents and Trademarks-designate, Mr. Mossinghoff, have already had a positive impact on the way in which the handling of present and future problems are viewed by the trademark community.

GENERAL COMMENTS ON THE PTO BUDGET

A shortage of funds to operate Trademark Operations in the PTO has been a major factor contributing to the Office's earning the designation "national disgrace." The additional appropriated funds proposed in the FY 1982 budget will begin to help remedy this problem as will the increased fee revenues that will be received as a result of the enactment of Public Law 96-517.

With respect to the funds allocated in this and future budgets, we must emphasize that it should not be the intent of Congress to provide only "adequate" levels of service, but that all efforts should be made to achieve effectiveness and efficiency in Trademark Operations resulting in a "first-class" operation -- by that we mean one that is free of backlogs and able to provide quality services. And, while on the surface it may appear that ten or twenty percent increases over previous years' budgets would improve the situation, Trademark Operations has decayed to such an extent that increases, even of this size, could be inadequate.

It also must be underscored during budgetary considerations that Trademark Operations are funded, in part, by user fees. We believe this fact has not been taken into full account during the appropriation process as fee revenues will continue to be credited to the General Fund of the U.S. Treasury through the end of FY 1982. For example, if one were to apply the trademark fee cost recovery levels realized in FY 1980 to the FY 1982 budget, the net cost of trademark operations in taxpayer dollars would be reduced by approximately thirty-three percent (33%). Thus, the actual government cost would be closer to $5,384,790 than the $8,037,000 indicated in the proposed budget.

As a result of the enactment of PL 96-517, the new fees that will go into effect in FY 1983 should increase the percentage of costs recovered through user fees dramatically. While the exact percentage will be dictated by the new fee structure under consideration, it could go as high as seventy-five percent (75%). Another impact of PL 96-517 is that, for the first time, fee revenues will be credited to a separate account in the U.S. Treasury which we understand will make them available on a "no-year appropriation" basis for use by the Commissioner to further improve Trademark Operations. We strongly endorse both of the abovementioned concepts of greater user financing and the application of fee revenues to a separate Treasury Account as ways to increase the quality of Trademark services.

With respect to these new fee revenues and the establishment of the new Account, we believe it to be imperative that any ambiguity in the law's legislative history be resolved according to the following criteria:

1. Separation of patent and trademark fee revenues. Patent and trademark fee revenues should not be co-mingled, i.e., distinct "sub-accounts" for each should be established to prevent purchasers of either patent or trademark services from subsidizing the services received by the other.

2. Flexibility in administration of fee revenues. The Commissioner of Patents and Trademarks should be allowed certain flexibility in administering these funds to ensure the maximization of all available resources. This would include the use of some of these funds for the creation of an "emergency" fund to be tapped in the event of the development of unexpected backlogs. For example, to preclude the recurrence of the problems surrounding last year's insufficient financing of the Office's printing function.

3. Attainment of a "first class" operation. As with appropriations, one of the criteria used in establishing new fee structures must be to facilitate the attainment of a "first class" operation.

Should these suggestions govern all considerations regarding anticipated fee structures and the use to which expected revenues are put, we believe the result would be long-term benefits to both the PTO's constituency and the consuming public.

THE FY 1982 BUDGET REQUEST

The objective stated in justification for the proposed FY 1982 budget for the trademark process is to "reduce backlogs to a level acceptable to the public." When speaking of backlogs, a good barometer is what is referred to as pendency to the time it takes for a "First Action" to issue from the PTO ('pendency to first action'). This must be distinguished from the actual issuance of the registration which currently is averaging twenty-five (25) months.

The proposed FY 1982 budget is geared toward reducing pendency to first action from its present eleven (11) months to 9.8 months. Further, it projects that pendency to first action will be reduced only to 6.6 months in FY 1986, with registrations probably well in excess of one year. In our view, these pendency goals are not acceptable. In fact, we find these goals so far short of a "first class" operation they can hardly be called "adequate." As important as speed my be, however, USTA cannot advocate any reductions in standards of quality as a means of reducing backlogs.

The three specific "line items" which will be increased by this proposed budget are for personnel, printing and funds for automation. With the expectation that the number of trademark applications filed will continue to increase and with the overwhelming need to reduce backlogs, funding in these areas and the entire PTO budget affecting trademark operations must not be reduced from proposed levels. We believe it is important, however, to address what may appear to be a contradiction in this budget -- that of increased dollars not having as profound an impact on reducing backlogs as one might like and anticipate.

Aside from the aforementioned statement that many of Trademark Operations problems can be attributed to a shortage of operating funds, it is critical to look beyond essential funding to some other related problems in the office.

Personnel. For example, in the area of personnel, the needed additional examiners provided for in this budget will not provide enough manpower unless those presently working for the PTO remain in their positions, a highly unlikely prospect based upon past experience.

The problem is that turnover in Trademark Operations is a tremendous drain on efficiency. During the last six years, seventy-five percent (75%) of the examining corps has left government service or sought positions elsewhere in the bureaucracy. Considering a trademark examiner's maximum efficiency is not reached until six years of service and the time required to advertise, hire and train new examiners, every effort must be made to maintain qualified, experienced professionals.

Reasons for leaving are understandable if one looks at the potential for growth and working conditions. While comparisons are difficult to make, a brief look at the relative grade levels of patent and trademark examiners is revealing. Trademark examiners, all of whom must be attorneys, begin at Grade 11 and "top off" at Grade 13. Grade levels for non-attorney patent examiners "top off" at Grade 15. Additionally, when one considers what an attorney can earn in private or corporate practice, the potential for growth these careers hold and the working conditions outside the PTO, Trademark Operations understandably becomes a training ground to gain experience and move on. Simply stated, there is no motivation to make the Trademark Office a career.

As a remedy, it seems that something must be done in the way of compensation, morale and the creation of a professional environment to encourage the retention of attorney examiners so trademark owners and consumers can benefit from the continuity of an experienced workforce.

Similar attention must be given to the clerical staff of the Trademark Office. Because of the demands made upon them and the nature of their work, clerks are often vested with para-legal responsibilities. Here again, we believe that existing guidelines do not recognize the needs of the Office.

At the other end of the personnel spectrum, we are curious as to why the Assistant Commissioner for Trademarks is the only Assistant Commissioner who must work without the assistance and benefits of a Deputy Assistant. The absence of this position puts greater demands on the Assistant Commissioner, thereby reducing the amount of time this individual can devote to his/her job functions as well as to important tasks like long-term planning. Its lack also overlooks the value of continuity during the Assistant Commissioner's absences or in the event of turnover in the Office.

Printing. The additional funds allocated to printing in the proposed FY 1982 budget are desperately needed to prevent a recurrence of the problems that plagued the office last year. For example, during FY 1980, over 16,000 applications for registration that had been processed and sent to registration could not be issued due to a shortage of funds. Thus, while the marks were available to the applicant, the registrations were of no value to their owners because the certificates of registration could not be printed and mailed.

In another area, a shortage of funds to print the Official Gazette ("OG") creates a ripple effect throughout trademark operations. The statutorily-required weekly publication of the OG provides the mechanism by which the public is given the opportunity to oppose the registration of a mark prior to the issuance of a registration. If, as happened in FY 1980, funds are unavailable for this purpose, no marks can be published for opposition. Then, when funds are released, as was made possible last year through the good offices of this Subcommittee's Chairman, the printing backlogs that are cleared result in backlogs in the Trademark Trial and Appeal Board (TTAB) where oppositions are heard and decided. As a result, examiners are frequently shifted to assist the members of the TTAB on a temporary basis thereby reducing the output of the examining corps and increasing pendency to first action.

Automation. The final area where increased appropriations are requested is in the area of automation. These funds, although insufficient to complete a process that has been planned, discussed and approved more often than one would like to think, are a step in the right direction. If computerized, many aspects of the searching process would be simplified and the thoroughness of searches would be dramatically improved. This would increase the timeliness of processing a trademark application and would contribute to maintaining the quality of the services provided by the Office.

Here it is useful to mention the value the previously-mentioned "no-year appropriation" would have. For years, automation has been regarded as the only course to pursue in many of the programs undertaken by the office. Unfortunately, though, the complexity of proceeding with this process has been compounded because the process has been started and stopped so many times due to funding shortages.

Word processors also must be acquired without further delay and we understand that one dozen will be delivered on July 1. Their acquisition will be very helpful as clerk typists presently type standardized paragraphs by hand, further reducing their productivity. The need for word processors is further evidenced in light of the examiner:clerk typist ratio in the examining corps which provides only two clerks for every fourteen attorney-examiners.

Before concluding, it is important to mention two other impediments which stand in the way of Trademark Operations becoming truly efficient. The first is the scattering of the operation through as many as five different buildings and the inadequacy of the amount of space allocated to the trademark process. While both of these situations are cause for frequent study, we do not believe they will be completely ameliorated until the entire PTO is consolidated in one location.

The second is that many of the elements of the trademark process do not fall under the direct supervision of the Assistant Commissioner for Trademarks whose department's performance is nonetheless inextricably dependent upon their proper functioning. Examples of these items would be the mail room, the "warehouse" where essential background files are stored and, finally, the abovementioned computers for the search room. This diversity of responsibility in a process where backlogs in one area lead to the creation of backlogs throughout the entire operation, makes the accomplishment of a smoothly-run, complex program even more difficult. Our Association believes the organizational structure, its job descriptions and its staff reporting lines beg the enactment of new and innovative management techniques.

CONCLUSION

In conclusion, The United States Trademark Association recognizes that reaching a "first class" operation cannot be accomplished overnight. Yet, we maintain that it can be done in a relatively short period of time if there is commitment on all levels to its attainment. Care must be taken to balance the needs of speed and quality, so that neither improves at the expense of the other. This is a real concern as a rapidly-issued registration that will not hold up in Court can become far more costly than delays in acquiring the registration.

The growing interest and realization of the need for improved trademark services that USTA is seeing at all levels of government are deeply reassuring to those who are directly involved with the trademark process and we are confident it will have a profound effect upon the overall economy and the consuming public.

USTA is commited to the objective of making Trademark Operations "first class" and make ourselves available at any time if we can be of service. As an Association we have also expressed our willingness to support the establishment of reasonable fee structures that will help finance its attainment.

For myself and The United States Trademark Association I should like to thank you again for the opportunity to appear before you today. I will gladly answer any questions you may have.

STATEMENT OF THE NATIONAL CONGRESS FOR COMMUNITY ECONOMIC DEVELOPMENT

Thank you, Mr. Chairman, for the opportunity to submit written testimony before the Senate Appropriation Subcommittee on State, Justice, Commerce, and the Judiciary for $360 million appropriations for the Economic Development Administration in FY 1982.

The National Congress for Community Economic Development (NCCED) is a national trade association representing Community Development Corporations (CDCs) throughout the United States. EDA resources have been critical for enabling CDCs and other community-based development organizations to plan, develop, and implement economic development projects that increase the number of jobs and provide ownership opportunities in distressed communities.

CDCs operate in some of the most distressed areas in the United States including: Bedford-Stuyvesant, Harlem, and the South Bronx in New York City; Hough in Cleveland; East Los Angeles; Southeastern Kentucky, the poorest area in Appalachia; Rural Alaska and the Navaho Reservation to name a few of the CDC communities. The last several years have seen an increase in the number of CDCs that have accessed EDA funds to implement development projects. EDA provides a variety of flexible tools and resources for economic development activities. CDCs have primarily used EDA funds for industrial parks, commercial facilities, business assistance loans, and revolving loan guarantee funds (RLGF).

One of the major characteristics of distressed communities of the type CDCs operate in is in a lack of industrial space for small and medium size businesses. This translates into a lack of jobs for area residents and means that many area residents have to travel great distances to their jobs. There are over ten CDCs that started industrial parks in their respective communities in the last several years using EDA funds. These industrial parks provide space for businesses that are labor intensive and provide jobs that are upwardly mobile to low income residents.

Several other CDCs have initiated commercial development projects with EDA as the key funding source. These projects also tend to renovate abandon commercial facilities in the community. The Union Sarah Economic Development Corporation (USEDC) in St. Louis, serves a predominantly black community of 32,000 individuals characterized by antiquated physical infrastructure; high rate of unemployment; lack of small business and low capital formation; and inadequate housing. USEDC acquired an abandoned 147,000 square foot commercial building with EDA funds and rennovated the building which is called Central West Plaza. Central West Plaza has been open less than a year and it already has a 72 percent occupancy rate on a long term basis. When 85 percent of the building is leased, USEDC will generate revenues exceeding $350,000 above expenses. It will not have to depend on the federal government for administrative or project funding.

CDCs have had considerable success in assisting or investing in growth small businesses that generate considerable numbers of jobs in CDC communities. CDCs have benefited from EDA direct business assistance loans to help growth businesses expand. CDCs have invested loans of over $500,000 in these businesses. Impact Seven, Inc., a CDC located in Tuttle Lake, Wisconsin serves a large rural economically distressed area consisting of six counties and two Indian reservations with a population of 160,000. Impact Seven, Inc. has carried out a very unique real estate financing project using EDA business development assistance. Impact Seven, Inc. was approached by a high technology computer manufacturing firm Cray Research (headquartered in Minnesota) which was in need of expansion capital for its manufacturing operation located in Chippewa Falls, Wisconsin. At the time Cray Research was in a new facility with 32,000 square feet of space. Impact Seven, Inc. proposed to purchase the facility from Cray and lease the same facility back to Cray. The effect being that Cray could use the capital from the sale of the facility to expand their operation while leasing the same facility from Impact Seven. The project most importantly prevented Cray from having to leave the area to find a larger facility which would have resulted in the loss of jobs.

As a direct result of this EDA supported project 120 new jobs have been created for the area and 225 jobs have been retained. Cray is now looking to expand again with another 75 new jobs targeted.

Another EDA tool which has become increasingly popular is the revolving loan guarantee fund (RLGF). The RLGF enables small businesses to receive loans from lending institutions that the lending institution would not have made without the loan guarantee. RLGF's have tremendous impact because they make so many loan guarantees to local small businesses. One of the major problems that small businesses encounter is the lack of financing, and RLGFs provide important vehicles for enhancing the opportunity of small businesses to receive financing. Distressed communities suffer from a general lack of capital and equity financing opportunities. CDCs have been able to utilize RLGFs to stimulate business formation and retention in their communities. The Northern Community Investment Corporation, a CDC serving six counties in Vermont and New Hampshire started a RLGF in 1976 that has guaranteed 30 loans from 16 local banks to maintain and create 368 permanent private business jobs in the community. NCIC has used its $350,000 RLGF to generate $1,375,000 in loans that banks would not otherwise have made.

While most of the EDA programs are project oriented, EDA does provide valuable planning and technical assistance to economic development organizations. This planning and assistance is often overlooked by people interested in short term results. However, it is critical in providing the institutional capacity to enable organizations such as CDCs to implement long term economic development projects. In light of the Reagan Administration's attempt to eliminate many of these planning and technical assistance programs, we feel it is critical that EDA continue to provide planning and technical assistance resources to economic development organizations.

EDA has played a vital role in enabling CDCs to implement a variety of different economic development activities. There is a tremendous need for the continuation of EDA programs to distressed communities. NCCED concurs with the House Public Works and Transportation Subcommittee on Economic Development's view that there is strong evidence for a continued subnational economic development policy requiring financial assistance by the Federal government. To our knowledge, no national fiscal or monetary policy has ever reached all areas of the country in a timely or equitable manner. The private sector also has not been able to or willing to marshall the financial resources necessary to economically revitalize distressed communities. EDA public works and business assistance programs have made an economic difference in distressed communities.

EDA resources must be viewed as investments in both projects and communities. These investments create jobs, increase the flow of income in distressed communities, leverage private sector resources, and generate tax revenue to the U.S. Treasury and state and local governments. EDA's total investment of under $5 billion has created more than 1.4 million jobs which yield over $6.5 billion in tax revenues each year. In addition, EDA investment funds have leveraged over $9 billion in private investments. Most of that $9 billion would not have been invested without EDA program dollars. For example, Union Sarah Economic Development Corporation has utilized $5,300,000 of EDA funds to leverage over $21,000,000 which consists of $18,300,000 of bank loans and $3,000,000 from corporations.

One of the major reasons that EDA has been an effective subnational resource for distressed communities is that it provides flexible economic tools to distressed communities. Each community has different economic development needs and potentials. They can access different EDA resources if they have the planning and managerial capacity. The elimination of any of the EDA flexible tools whether it is public works, business loans or revolving loan guarantee funds, will reduce the number of economic development options that economic development organizations have. This, in turn, will reduce the flexibility to implement economic development programs, which is a major theme of the Reagan Administration.

We question whether the Reagan Administration's proposed Community Development Support Assistance Block Grant will be able to provide flexible economic development resources. Very little Community Development Block Grant (CDBG) funds have been used for economic development activities in the past. We are also concerned that states will not be able to fund projects of a size that will bring about permanent economic development results. Economic development is a long term process requiring subnational institutional capabilities on the part of both the funding source and grantee.

Another compelling reason for maintaining EDA programs is that they contribute to rebuilding and enhancing physical infrastructure needed for economic development. Dr. Pat Choate, an ecomomist with TRW Corporation recently published a study that documented America was losing infrastructure (i.e. water supply, transportation, deteriorating public plants) faster than it is being replaced. This is evident to an even greater degree in distressed communities. EDA public works funds have a catalytic effect in enhancing the public infrastructure and other supportive services which stimulate business development activities. In distressed communities, the private sector cannot realistically be expected to provide new infrastructure or rebuild old infrastructure such as water and sewer lines. Our infrastructure has to be strengthened through capital investments and through strong federal supports.

These above mentioned points document the continued need for EDA appropriations for fiscal year 1982. We support the appropriation recommendation of $360 million developed by the House Public Works and Transportation Subcommittee on Economic Development. We agree with that subcommittee that EDA will still be able to operate and provide viable resources at an appropriation level of $360 million, which is sixty percent of what the Carter Adminisrration recommended for EDA in FY 1982. An appropriation level below this figure will vastly reduce the economic impact of EDA program resources to distressed communities.

We also feel that EDA funds can become more efficient by being better targeted to areas of significant distress. At this time, the percentage of areas eligible for EDA assistance is too high, and a stricter targeting policy on the part of Congress and the Reagan Administration will ensure that reduced EDA funds will be more efficiently allocated. We have seen improved targeting of EDA funds in the last several years to distressed communities through the creation of the EDA Office of Special

Projects (OSP). OSP has provided a variety of EDA resources to severely distressed urban and rural communities, most of which are minority communities. However, we feel that EDA must continue to improve its targeting so that it can remain the primary public resource for subnational development that Congress envisioned it to be.

Mr. Chairman, thank you for letting NCCED submit written testimony before the subcommittee. We look forward to the subcommittee's appropriation recommendations for EDA.

STATEMENT OF JOAN Z. BERNSTEIN, CHAIRMAN, COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS

Mr. Chairman, as Chairman of the recently established Commission on Wartime Relocation and Internment of Civilians, I am here today to offer testimony in support of the Commission's request for a technical appropriation language change which would allow that funds already appropriated to the Commission for FY 1981 under Public Law 96-536 be available to the Commission until expended.

Before I address that point specifically, let me say that I think it is significant to recognize the extensive, bipartisan support the establishment of this Commission has received --- support indicated by the 96th and 97th Congresses, by the Carter Administration and more recently by the Reagan Administration.

The Committee, I am certain, is fully familiar with the legislative history of this temporary study commission. Briefly, during the 96th Congress, S.1647, a bill to establish a seven member Commission on Wartime Relocation and Internment of Civilians, received wide bipartisan support in both houses of Congress. Signed into law by President Carter on July 31, 1980, Public Law 96-317 charges the Commission with (1) reviewing the facts and circumstances surrounding Executive Order 9066, and the impact of that order on American citizens and permanent resident aliens; (2) reviewing directives of United States military forces that required the relocation and, in some cases, detention in internment camps of American citizens, including

Aleut civilians, and permanent resident aliens of the Aleutian and Pribilof Islands; and (3) to recommend appropriate remedies.

As you know, the 97th Congress, again with broad bipartisan support, passed S.253 which increased the number of members of the Commission from seven to nine. On February 10 of this year, President Reagan signed this measure into law. Public Law 97-3 contains no additional authorization of appropriations. The Commission has also been supported by the Reagan Administration in that OMB Director David A. Stockman approved the appeal of the Commission for an exemption from the hiring freeze on February 24, 1981.

The Commission now has its full complement of members. Staffing considerations have been made and we expect to move quickly within the next two weeks to fill the eleven authorized staff positions.

The Commission is authorized for an eighteen month period of study.. Public Law 96-536, the funding appropriation, only appropriated funds for FY 1981. Therefore, this appropriation change is requested and necessary to allow the Commission use of FY 1981 appropriated funds until expended in FY 1982.

Accordingly, the Commission on Wartime Relocation and Internment of Civilians requests that the Subcommittee approve its request for a technical language change in appropriations for the Commission.

STATEMENT OF DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Mr. Chairman, I am sure that all members of this Subcommittee are familiar with the Commission on Wartime Relocation and Internment of Civilians. Public Law 96-317 which created this Commission was unanimously passed by the Senate last year, and this Subcommittee provided the funding for this Commission as part of our FY 1981 appropriation bill.

This Commission has always enjoyed bipartisan support but because of a number of other problems--the delay in passing our FY 1981 bill, the delay in the appointments by the House, and the increase by two in the size of the Commission--the Commission has only recently begun its work. This work has now begun, and I am confident that the Commission will accomplish its task with diligence and dispatch. Yet, the delays that have already occurred make it necessary that the Commission be allowed to expend its funds in the next fiscal year.

Under P.L.96-317, the Commission is authorized to spend $1.5 million. Given the magnitude of the task which faces the Commission, this was, and is, a reasonable amount. Last year we appropriated two-third of this amount ($1.0 million) and I would note that Commission has not asked for the remaining $.5 million. Instead the Commission has only asked that the original appropriation remain available until expended. It is my hope that we will comply with this request.

The creation of the Commission on Wartime Relocation and Internment of Civilians was a commitment by the United States to review the facts and circumstances surrounding the treatment of Japanese-Americans and Aleuts during World War II. It is a measure of our nation's greatness that we would undertake such a task. And no matter how bitter the history that we uncover, we as a nation will be the better for having been willing to review it.

I urge the Subcommittee to provide the support that the Commission needs to complete its task.

STATEMENT OF BARBARA A. KWASNIK

I am deeply troubled by the seeming lack of commitment on the part of our present administrators and legislators for a strong national program for comprehensive coastal management and protection.

I am referring to the Coastal Zone Management (CZM) program that has been targeted for termination by the present administration as part of proposed major revisions to the budget submitted to the Congress by President Carter earlier this year.

This program has made progress in accomplishing many of its objectives. Better coordination between federal, state, and local and regional government now exists in many coastal areas because of the CZM program. In many cases, planned economic development of the coastal zone has now replaced previously sporadic, haphazard growth and development. Greater predictability exists for both public and private investments in industry, housing, recreation and conservation.

Yet, in spite of these accomplishments, the CZM program has not yet achieved the maturity that the Reagan administration cites. Last fall, the Congress reaffirmed our nation's commitment to the wise use and management of the coast by reauthorizing the CZM program for five years. While the program retained its state focus, a new emphasis was placed on specific national interest goals and on the proper management of coastal resources of national significance. States are now looking to the federal government for direction in considering these national goals, which would be forsaken without the CZM program.

Finally, this budget proposal assumes that states have the capability of fully financing their own CZM programs, with only a few months notice. But most states have already indicated this is an unlikely prospect. In addition, because in many states federal grants assist local coastal management efforts, the budget proposal will significantly affect local governments as well.

The CZM program is the only governmental program that has begun to address and overcome the fragmentary and short-term decision-making processes regarding coastal resources that have prevailed to date. Federal funds spent for comprehensive planning and institution building during the last five years have been a good federal investment. But, the value of that investment, in terms of both national and state needs, cannot be fully realized unless the program continues. Once the program matures and its benefits become more apparent, states should be willing to bear a greater share of the financial burden.

Consequently, I believe that abrupt and premature termination of funding in Fiscal Year 1982 is unwise and irresponsible. Taking into account both the national interest and the known capabilities of states, full funding of the CZM program in FY 82 ($37 million) is the only rational approach. In as much as we, as private citizens, have committed ourselves to such a program, I would expect that our elected representatives would feel that same sense of commitment and act accordingly.

STATEMENT OF W. RICHARD WEST, JR., LAWYER, FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN

I am W. Richard West, Jr. of the law firm of Fried, Frank, Harris, Shriver & Kampelman, and I am appearing today on behalf of the Native American Rights Fund, the National Tribal Chairmen's Association, the Cheyenne River Sioux Tribe of South Dakota, the Lummi Tribe of Washington, the Metlakatla Indian Community of Alaska, the Nez Perce Tribe of Idaho, and the Seneca Nation of New York. These Indian tribes and organizations are vitally interested in the future of the Economic Development Administration because of its direct impact on efforts to develop economically viable and self-sufficient Indian communities -- a goal, I might add, which is shared by the present Administration, and, for that matter, by the five previous Administrations. We appreciate this opportunity to discuss with the Subcommittee the numerous reasons why the Indian community believes funding for the Economic Development Administration must be continued.

As I am sure the members of this Subcommittee can appreciate, the obstacles to sustained economic development on Indian reservations are unique and have proved especially difficult to overcome. Unemployment on Indian reservations currently averages 40 percent and has exceeded 70 percent on some reservations. Underemployment also is rampant. The median annual family income of $5,000 for reservation Indians is well below the national poverty line, and the average level of educational attainment is the lowest in the United States. The average Indian life expectancy is twenty years less than the national average. Because of the prevalence of these problems, Indian communities often are perceived to be fundamentally lacking in local resources that are necessary to attract private capital and investment.

Private lenders are reluctant to loan funds for reservation economic development because those lenders, in securing their funds, must look primarily, if not exclusively, to the project being financed. Constraints upon the transferability of interests in Indian lands limit the collateral that can be given to private lenders for economic development. Furthermore, financing difficulties are compounded because the projects serving as collateral often are highly specialized or uniquely tailored to tribal needs, and are not readily marketable elsewhere. Thus, private lenders frequently view even this collateral as insufficient. Additionally, the absence of a proven business track record in most Indian reservation communities, as well as a limited or nonexistent credit history, makes private lenders wary. State governments, which usually have limited jurisdiction on Indian reservations and minimal governmental responsibilities, also have little incentive to finance or be involved in industrial development on reservations.

Furthermore, economic development on Indian reservations has been especially difficult due to the absence of the infrastructure necessary for industrial and economic expansion, such as water and sewage facilities, electricity, and an adequate road system. These communities lack the economic ability themselves to fund public works projects, and, consequently, many potential businesses are deterred from investing on reservations because the costs of private infrastructure development must be added to the cost of their investment.

Finally, economic development in Indian communities is complicated by the geographic isolation of most reservations and the generally unskilled nature of the local labor force. Since industries located farther from their markets are at a competitive disadvantage vis-a-vis more centrally located businesses, many industries are unwilling, in light of such difficulties, to locate on reservations. Temporary increased costs also may result from the use of untrained local employees. The numerous problems mentioned above do not mean that investment is ill-advised, but rather that by normal standards of credit most economic development on Indian reservations could not be funded without government guarantees.

The Economic Development Administration was created in 1965 to promote the long-range economic development of areas with persistent unemployment and low per capita income, and, in doing so, to address the general range of problems I have discussed above. In 1967 EDA established an Indian Desk in order to focus more specifically on the unique developmental problems facing Indian tribes.

During the past sixteen years, EDA has made tremendous strides in dealing effectively with the unique circumstances surrounding Indian economic development, and it has done so primarily by creating an environment conducive to private industrial development. EDA often has performed a market clearing house mechanism by identifying those growing industries least affected by these developmental difficulties and most able to utilize the resources already available on the reservation. Through its Industrial Development Program, EDA has attempted to determine the types of businesses which would be welcome on a particular reservation, and the kinds of industries which fit within a tribe's plan for economic development. Moreover, EDA then has contacted such companies and explained to them the opportunities and incentives for developing businesses on the reservation. With such information, businesses are able to determine more accurately whether the project is feasible. The success of EDA's efforts is reflected by the fact that there are 125 companies employing 4,051 employees on the 54 industrial parks EDA has funded on Indian reservations.

EDA's assistance in the creation of local infrastructures also has been critical in promoting economic development. In providing assistance to develop tribal infrastructures, EDA has enabled tribal communities to compete for private investment on a more equal basis with non-Indian communities. Increasingly, industries are able to decide where to expand on the basis of factors independent of the status of basic community services.

After undertaking feasibility studies, EDA also has provided financial assistance in the form of subordinated loans, loan guarantees and partial grants to specific industries compatible with planned tribal economic development. These incentives often have proved necessary to overcome temporary inefficiencies such as those resulting from the use of unskilled labor. EDA also sometimes has provided working capital loans to existing viable businesses that need time to regain their competitive capability. The EDA has demonstrated its ability to create a milieu in which private investment can create on reservations the employment opportunities necessary for stable communities.

Finally, in the area of providing technical and economic planning assistance, EDA also has had a significant impact upon tribal development efforts. Prior to EDA tribal governments had little or no prior experience in the technical aspects of coordinated economic planning. Indian development had been largely unplanned, and had been defined primarily by the type of federal assistance available. If financing were available for a particular type of project, the tribal government would undertake that project in the belief that a project was better than no project.

Through its planning grants and feasibility studies, EDA alone has reversed that process. Tribal governments themselves now seek to define their priorities in conjunction with the technical assistance provided by EDA personnel, and economic development has proceeded in a far more integrated, effective manner. Without such assistance Indian communities lack the capacity to continue long-range, coordinated economic planning. Tribal governments will fail to target their developmental efforts within an integrated scheme, and economic advancement will stagnate once again.

The Cheyenne River Reservation in South Dakota offers a typical example of the EDA's ability to facilitate successful economic development. The Cheyenne River Sioux Tribe's primary economic activity is the raising of cattle. With EDA assistance in planning, the Tribe decided to develop a secure water supply for its cattle and for the domestic use of its members. EDA then led the way by financing $1.3 million for the development of an oversized 21-mile water pipeline system on the Reservation. The system was oversized in order to accommodate further pipeline expansions, and at the present time several hundred miles of pipeline additions are planned or under construction. Moreover, the system will benefit non-Indians residing on the Reservation; indeed, it will provide water for the town of Faith, South Dakota, a community which is predominantly non-Indian, and is located outside the Reservation.

EDA also was critical in assuring that this water system developed in a rational, integrated fashion. Thus, in FY 1975, EDA provided financial assistance to procure pumps needed to move water through the system, and, in FY 1978 and FY 1979, EDA provided financing of $1.2 million to develop a water treatment plant necessary for use of the water pumped through the system.

EDA's planning and financial assistance has enabled the tribe to develop a secure water supply for its cattle, thereby assisting in the stabilization of the Tribe's entire economy by making it less susceptible to uncontrollable weather conditions. Stabilization of the water supply will enable the cattle herds to be expanded more predictably and more profitably, and this result will enable the Tribe and its members to obtain greater outside financing for local projects. Additionally, the standards of living of many Tribal members will be improved materially.

More important, EDA's assistance not only has advanced the Tribal economy in its present form, but also has laid the foundation for further economic expansion. Specifically, this water system easily could be expanded beyond its present design to provide irrigation to the surrounding lands. It is expected that commercial agriculture soon will be an addition to the Cheyenne River Sioux economy.

At other times, EDA assistance has been tied more directly to a particular industrial project. Thus, when the development of a local timber milling facility on the Metlakatla Community's Annette Islands Reserve became contingent upon the construction of adequate local docking facilities for ocean going shipping, EDA provided the financing needed to build the required barge pier and docking facility. By 1972 that timber facility was employing approximately 110 people, 85 percent of whom were Metlakatlans.

Similarly, with EDA assistance the Seneca Nation was able to develop a commercially successful campground on the Nation's Allegany Reservation. Much of the money needed for that project has been provided by the Nation itself, but without EDA's initial assistance, the project could never have been started.

EDA also has made a significant and irreplaceable contribution to the economy of the Lummi Indian Reservation in the State of Washington. In the early 1970's the Lummi Tribe undertook important and innovative work in the area of aquaculture, the sea ranching of fish and shellfish. The venture involved a great many risks and much pioneering work for which private capital could not be attracted. EDA supplied a substantial portion of the necessary funding for the construction of a salmon hatchery, as well as a 750-acre "seed pond" and oyster hatchery, which is now the largest producer of oyster seed in the western United States. These projects were especially relevant to the Lummi people, who by tradition make their living from the sea. They also make an important financial contribution to the economy of the non-Indian community, and have provided more than $19 million worth of salmon to the commercial fishery in the past few years.

The Lummi Reservation also has suffered from sewage treatment problems, due to lack of soil suitable for septic tank systems, which has markedly restricted economic development. EDA contributed to the funding and planning of the comprehensive sewage system to be built and administered by the Tribe and to serve all Reservation residents. Although EDA was not the lead agency on the project, its willingness to cooperate with other agencies in solving infrastructure problems which posed practical barriers to the goal of economic self-sufficiency was key to the success of the project.

As the examples discussed above illustrate, EDA on repeated occasions has proved itself capable of serving as a facilitator for private economic development on reservations. Indeed, a recent Congressional Budget Office analysis prepared for this Subcommittee concluded that, on a national basis during the period 1976 through 1979, 84 percent of EDA business development loans would not have been created by the private sector alone, 55 percent of the public works projects would not have been undertaken by the private sector alone, and 8 percent of the EDA loan-guaranteed projects would have gone unfunded. Given the unique economic problems faced by Indian tribes, I am sure these statistics are far greater in relation to investments on Indian reservations.

This is an especially inappropriate time to consider a reduction of the assistance provided to Indian communities by EDA. Most of the developmental efforts of tribal governments over the past decade have been in the area of infrastructure necessary to attract outside business investment. What will be needed in the future is the seed money assistance EDA traditionally has provided to induce outside developers to overcome their historical reluctance to expand onto reservations.

I have sought to illustrate that EDA peculiarly and effectively has been able to provide the financial, technological, and management assistance which is necessary to attract the private enterprise that will make tribal communities economically self-sufficient. EDA frequently has meant the difference between real economic advancement and a sense of economic stagnation, despair and disruption. EDA has been able to provide permanent private sector jobs, not only short-lived public works construction projects. It has helped Indian tribal governments develop the capability to plan their own economic development in a manner consistent with tribally developed goals and objectives, and it has changed, in a very real sense, the quality of life for many Indians.

In short, EDA has helped provide Indian tribes with the possibility of true private economic development to replace the public welfare economy which typifies so many Indian reservations. It would be a tragic and, indeed, counter-productive mistake if this Congress terminates the Economic Development Administration's significant contribution to Indian economic development.

SUBCOMMITTEE RECESS

Senator COCHRAN. The subcommittee will stand in recess until 9 a.m. tomorrow, April 22. Thank you very much.

[Whereupon, at 3:50 p.m., Tuesday, April 21, the subcommittee was recessed, to reconvene at 9 a.m., Wednesday, April 22.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

WEDNESDAY, APRIL 22, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room S-146, the Capitol, Hon. Lowell P. Weicker, Jr. (chairman) presiding.

Present: Senators Weicker, Cochran, and Rudman.

COMMISSION ON CIVIL RIGHTS

STATEMENT OF ARTHUR S. FLEMMING, CHAIRMAN

ACCOMPANIED BY:
- LOUIS NUNEZ, STAFF DIRECTOR
- BERT SILVER, ASSISTANT STAFF DIRECTOR FOR ADMINISTRATION
- JOHN BIRKLE, BUDGET OFFICER

BUDGET REQUEST

Senator **WEICKER**. The committee will come to order.

Our first request is that of the Commission on Civil Rights. The amount requested is $12,318,000, an increase of $147,000 over the 1982 base, and a decrease of eight permanent positions.

Appearing on behalf of this request is Dr. Arthur S. Flemming, the Chairman, who is accompanied by Louis Nunez, the Staff Director, Bert Silver, the Assistant Staff Director for Administration, and John Birkle, the Budget Officer.

Dr. Flemming, we are pleased to accept your statement in its entirety and have you give it however you deem appropriate. Upon the conclusion of your statement, I will allow Senator Cochran to proceed, as he has another hearing. Go right ahead.

Mr. **FLEMMING**. I am very happy to have the opportunity of appearing before the committee in support of the President's request for $12,318,000 and 248 permanent positions for the fiscal year 1982.

The anticipated appropriation for fiscal year 1981, including pay costs, will be $12,171,000, which will support 256 permanent positions.

The 1982 request represents an increase in funds of $147,000 over 1981, but taking mandatory increases into account that will fund the program at a lower level.

The Commission has been authorized $12,600,000 in fiscal year 1981. Legislation to authorize the fiscal year 1982 appropriation request has been submitted to the Congress.

In support of our budgetary request, I am pleased to discuss with you the major aspects of our work plan for fiscal year 1982. In so doing, I want to emphasize the fact that we will always be prepared to redirect our programs in response to any critical developments in the civil rights area.

HATE GROUPS

We are deeply concerned with the manner in which violence and incitement to violence have recently been encouraged by organizations fomenting racial and religious hatred. We have initiated a study of this critical problem this year.

In keeping abreast of such violence we have utilized our State advisory committees to monitor local situations and to keep us constantly apprised. A field project on bigotry and violence will also be conducted by several State advisory committees and regional offices later in this fiscal year.

In 1982, this problem will continue to be one of our major areas of concern. Again, with the help of State advisory committees, we will monitor developments in the field and place major emphasis on the role of Federal agencies.

EQUAL EMPLOYMENT

We believe it is imperative for the Nation to continue to move toward the goal of equal employment opportunity. The high unemployment rates of minorities and women as compared with white males demonstrates that a great deal remains to be done.

In 1982, we will continue to monitor, with the assistance of all of our regional offices, the activities of Federal agencies in advancing equal employment opportunity.

Mr. Chairman, I will, in the interest of your time, skip some of this material. I will submit the entire statement to be included in the record.

This year we are continuing a study dealing with unemployment and underemployment of minorities and women. This study will be completed in 1982 and will be transmitted to the President and the Congress together with our findings and recommendations.

The Commission has in circulation a draft of a proposed revised statement on the utilization of affirmative action plans by both public and private employers in order to achieve the goal of equal opportunity in the field of employment. We have held two public consultations during which persons holding a variety of opinions on affirmative action have commented on our proposed statement.

We will evaluate the views that have been expressed at those public consultations and then agree on the final text of this statement.

VOTING RIGHTS

Historically, the Commission has been deeply involved in protecting the voting rights of minorities. In 1981, we will complete a major study to determine whether the Voting Rights Act should be extended, and if so, with what provisions. State advisory committees have been making significant contributions to this study. During the 1980 election, for example, members of our State advisory committees monitored precincts in two districts, and each State fully or partially covered by the act to determine if minorities were experiencing problems in voting.

In 1982, the Commission will continue its activities in the area of voting rights by responding to congressional requests for additional information and for the views of the Commission based on the results of our study. We will also monitor the effect on minorities of redistricting.

If the act is extended and the provisions are changed, we will revise and reissue our handbook on the act.

SCHOOL DESEGREGATION

We still consider school desegregation as one of, if not the most important issues in the field of civil rights in our Nation. This year, and in 1982, we will monitor Federal Government enforcement activities in the Departments of Justice and Education. We will be assisted in our monitoring activities by our State advisory committees.

In 1981, several State advisory committees, including Connecticut, Arizona, New York, Kentucky, Minnesota, Missouri, and North Dakota, are conducting projects on fair housing. State advisory committees and Washington-based monitors will continue to work in this area in 1982.

FAIR HOUSING

Major emphasis will be placed on the activities of the Department of Housing and Urban Development relative to the enforcement of the Fair Housing Act. In 1982, the Commission will hold a consultation dealing with the problem of housing discrimination and how it affects the living conditions of minorities, the elderly and female heads of households.

ADMINISTRATION OF JUSTICE

Several administration of justice projects are about to result in the issuance of major reports. A statutory report on police practices is based primarily on evidence developed during hearings held in Philadelphia, Houston, and Washington, as well as on State advisory committee activity.

A report on the legal systems' response to women victims of domestic violence is based on hearings held in Phoenix and Harrisburg. The statutory report completing our National Indian Report, dealing mainly with administration of justice issues, is also nearing completion.

Earlier this year, we issued an oversight report on the operation of the Immigration and Naturalization Service.

In 1982, we will, with the assistance of our regional offices and our State advisory committees, follow up on these reports.

"PROTECTED CLASSES"

We continue to work on problems of a variety of "protected classes." Last year, we realized a clearinghouse report analyzing educational, income, and occupational data covering Asian-Americans. The statutory report dealt with deficiencies in data collection, complaint processing, compliance reviews, and so forth, in HEW's enforcement of title IX. We will soon complete a congressionally requested study of race and ethnic discrimination in Federal programs for older persons.

In 1982, we will undertake a study of discrimination against the handicapped which will focus on the reasonable accommodation that recipients of Federal contracts and grants must make to the needs of the disabled.

We have initiated a Euro-ethnic employment discrimination study as a followup to the 1980 consultation. We will also include data on Euro-ethnics in our fiscal year 1982 project to update the social indicators report with 1980 census data.

A monograph on religious discrimination is now being prepared as a followup to the recent consultation on that subject. In fiscal year 1982, we propose to hold hearings on equal educational opportunities for language minority students.

MIAMI HEARING

The Commission held a 4-day hearing in Miami, Fla., in December 1980 to assess the state of civil rights in that city. A report will be completed this fiscal year.

In September 1981, the Commission plans to hold a hearing on minority economic development in an urban center in the Northeast. The hearing will focus on the economic relationship of the minority community to the larger economic setting. Processes and mechanisms which limit minority participation will be identified. Recommendations will be made to the Congress and the President.

In the latter part of this fiscal year or early next fiscal year, we will begin establishing a centralized storehouse of statistical information and resources as a data bank clearinghouse.

PREPARED STATEMENT

This, Mr. Chairman, summarizes our planned program. The other Commissioners and I believe the funds requested are consistent with the work assigned to us by the Congress. I will be pleased to answer any questions you might have concerning this appropriation or the work of the Commission generally.

[The statement follows:]

STATEMENT OF ARTHUR S. FLEMMING

Mr. Chairman, members of the Committee I am Arthur S. Flemming, Chairman of the U. S. Commission on Civil Rights. Accompanying me are Louis Nunez, the Staff Director; Bert Silver, the Assistant Staff Director for Administration and John G. Birkle, the Budget Officer.

I am testifying today to support the President's request for $12,318,000 and 248 permanent positions for Fiscal Year 1982. The anticipated appropriation for Fiscal Year 1981, including pay costs, will be $12,171,000 which will support 256 permanent positions. The 1982 request represents an increase in funds of $147,000 over 1981, but taking mandatory increases into account that will fund the program at a lower level.

The Commission has been authorized $12,600,000 in Fiscal Year 1981. Legislation to authorize the Fiscal Year 1982 appropriation request will be introduced soon.

In support of our budgetary request I am pleased to discuss with you the major aspects of our workplan for Fiscal 1982. In so doing I want to emphasize the fact that we will always be prepared to redirect our programs in response to any critical developments in the civil rights area.

We are deeply concerned with the manner in which violence and incitement to violence have recently been encouraged by organizations fomenting racial and religious hatred. We have initiated a study of this critical problem this year. In keeping abreast of such violence we have utilized our State Advisory Committees to monitor local situations and to keep us constantly apprised. A field project on bigotry and violence will also be conducted by several SACs and regional offices later in this fiscal year.

In 1982 this problem will continue to be one of our major areas of concern. Again with the help of State Advisory Committees we will monitor developments in the field and place major emphasis on the role of Federal agencies.

It is imperative for the nation to continue to move toward the goal of equal employment opportunity. The high unemployment rates of minorities and women as compared with white males demonstrates that a great deal remains to be done.

In 1982 we will continue to monitor, with the assistance of all of our regional offices, the activities of Federal agencies in advancing equal employment opportunity. State Advisory Committees in Massachusetts, New Jersey, and Tennessee will contribute to our work in this area by completing local equal employment opportunity projects. The evidence that is developed as a result of these monitoring activities will be evaluated by the members of the Commission and will provide the basis for findings and recommendations which we will transmit from time to time to the President and the Congress.

This year we are continuing a study dealing with unemployment and underemployment of minorities and women. This study will be completed in 1982 and will be transmitted to the President and the Congress together with our findings and recommendations. During 1982 we will also be following up on our findings and recommendations growing out of our second study of labor unions and equal employment opportunity and a consultation held this year on minority youth unemployment.

The Commission has in circulation a draft of a proposed revised statement on the utilization of affirmative action plans by both public and private employers in order to achieve the goal of equal opportunity in the field of employment. We have held two public consultations during which persons holding a variety of opinions on affirmative action have commented on our proposed statement. We will now review carefully the views that have been expressed at these consultations and any others that may be made available to us in writing, make revisions and then issue the statement in final form. Once the statement has been issued we will determine from time to time in 1982 the progress or lack of progress that has been made in implementing the conclusions included in the statement and will make recommendations as to steps that we believe should be taken by the President and the Congress to accelerate progress toward the goal of equal opportunity in the area of employment.

Historically the Commission has been deeply involved in protecting the voting rights of minorities. In 1981 we will complete a major study to determine whether the Voting Rights Act should be extended, and if so with what provisions. State Advisory Committees have been making significant contributions to this study. During the 1980 election, for example, members of our State Advisory Committees monitored precincts in two districts in each state fully or partially covered by the Act to determine if minorities were experiencing problems in voting.

In 1982 the Commission will continue its activities in the area of voting rights by responding to congressional requests for additional information and for the views of the Commission based on the results of our study. We will also monitor the effect on minorities of redistricting. If the Act is extended and the provisions are changed we will revise and reissue our handbook on the Act.

We still consider school desegregation as one of, if not the most important issue in the field of civil rights in our nation. This year and in 1982 we will monitor Federal government enforcement activities in the Departments of Justice and Education. State Advisory Committees and regional offices will monitor developments in key cities such as St. Louis, Kansas City, Los Angeles, Chicago, Portland, Wilmington and Cleveland. In both 1981 and 1982 we will provide a summary of where the nation stands in relation to the objective set forth in Brown v. Board of Education in 1954. Throughout 1982 we will report periodically to the President and to the Congress on steps that we believe can and should be taken to remove obstacles that continue to deny to many minority children and young people equal access to our educational resources.

In 1981 several State Advisory Committees including Connecticut, Arizona, Virginia, New York, Kentucky, Minnesota, Missouri and North Dakota are conducting projects on fair housing. State Advisory Committees and Washington based monitors will continue to work in this area in 1982. Major emphasis will be placed on the activities of the Department of Housing and Urban Development relative to the enforcement of the Fair Housing Act. In 1982 the Commission will hold a consultation dealing with the problem of housing discrimination and how it affects the living conditions of minorities, the elderly and female heads of households. Findings and recommendations will be transmitted to the President and the Congress based on this consultation and the monitoring activities.

Several administration of justice projects are about to result in the issuance of major reports. A statutory report on police practices is based primarily on evidence developed during hearings held in Philadelphia, Houston, and Washington as well as on State Advisory Committee activity. A report on the legal system's response to women victims of domestic violence is based on hearings held in Phoenix and Harrisburg. The statutory report completing our National Indian Report, dealing mainly with administration of justice issues, is also nearing completion. Earlier this year we issued an oversight report on the operation of the Immigration and Naturalization Service.

In 1982 we will, with the assistance of our regional offices and our State Advisory Committees, follow-up on these reports. The State Advisory Committee in New York is working on an immigration project; New Hampshire on battered women; and Ohio and Minnesota on police practices. Washington based staff and all regional offices will monitor the response of Federal agencies to the recommendations contained in all of our administration of justice reports. Based on these monitoring activities we will make recommendations to the President and the Congress designed to further the objective of removing the festering sores that develop in our nation whenever the facts point to the conclusion that minorities are either being denied access to our system of justice or that it is being used by those who administer it to give expressions to their racist beliefs. We believe that it is these festering sores that Congress had in mind when in 1964 it extended our jurisdiction to include discrimination in the administration of justice.

We continue to work on problems of a variety of "protected classes." Last year we released a clearinghouse report analyzing educational, income and occupational data covering Asian Americans. A statutory report dealt with deficiencies in data collection, complaint processing, compliance reviews, etc., in HEW's enforcement of Title IX. We will soon complete a congressionally requested study of race and ethnic discrimination in

Federal programs for older persons. In 1982 we will undertake a study of discrimination against the handicapped which will focus on the "reasonable accommodation" that recipients of Federal contracts and grants must make to the needs of the disabled.

We have initiated a Euro-Ethnic employment discrimination study as a follow-up to the 1980 consultation. We will also include data on Euro-Ethnics in our Fiscal Year 1982 project to update the Social Indicators Report to include 1980 Census Data. A monograph on religious discrimination is now being prepared as a follow-up to the recent consultation on that subject. In Fiscal Year 1982 we propose to hold hearings on equal educational opportunity for language minority students.

The Commission held a four day hearing in Miami, Florida in December 1980 to assess the state of civil rights in that city. A report will be completed this fiscal year. In our report we will, among other matters, identify the impact on an area such as Miami of a failure on the part of the Federal Government to coordinate effectively its programs and resources which have a direct impact on civil rights issues. We will make specific recommendations designed to bring about an improvement. In 1981 and 1982 selected State Advisory Committees will vigorously continue these types of inquiries in urban areas which may have a propensity for urban disorders. Members of the Commission will at times participate in these inquiries particularly where it is determined that they can be facilitated by the use of the Commission's power of subpoena. At least one of these inquiries will seek to establish the relationship between the implementation of civil rights laws and community programs designed to confront the issue of the increasingly disproportionate number of minority poor.

In September 1981, the Commission plans to hold a hearing on minority economic development in an urban center in the Northeast. The hearing will focus on the economic relationship of the minority community to the larger economic setting. Processes and mechanisms which limit minority participation will be identified. Recommendations will be made to the Congress and the President.

In the latter part of this fiscal year or early next fiscal year we will begin establishing a centralized storehouse of statistical information and resources as a data bank clearinghouse. This project will facilitate preparation of Commission statistical reports and testimony as well as our ability to provide information to outside groups.

That, briefly summarizes our planned program. The other Commissioners and I believe that the funds requested are consistent with the work assigned to us by the Congress. I will be pleased to answer questions you might have concerning this appropriation request or the work of the Commission generally.

LAUREL, MISS. FILM

Senator WEICKER. Senator Cochran?

Senator COCHRAN. Thank you, Mr. Chairman. Dr. Flemming, welcome to the committee. I know I join the chairman in expressing our appreciation for a very full report on the prospects of activities of the Commission this year and why this level of funding is needed to carry out those objectives and goals.

In my State recently it came to my attention that a film that was either made, or authorized, or paid for by the Commission had aroused quite a bit of concern in the town of Laurel. I want to ask you a few questions about the filmmaking and about that particular film.

The name of the film was "Laurel and Laurel, a City Divided." My information is that the Mississippi Advisory Committee had either asked for the making of the film to be paid for by the Commission or the Commission had authorized the committee to have the film made.

Apparently the film, is supposed to show that an at-large system of municipal government, per se, or at least in this instance, denies minority members of that community equal access to public funds and public services.

Who authorized the film? Was it authorized by the Commission or by the committee, and who paid for it?

Mr. FLEMMING. Senator, first of all, you are referring to an activity of our State advisory committee. The Commission does have in every State a State advisory committee which is appointed by the Commission. Members of the State advisory committee are citizens of that State and they are persons who volunteer their services as members of the committee.

The staff support of the State advisory committees is provided by our regional offices. I will ask our Staff Director, Mr. Nunez, who has responsibility for the administration of the work of the Commission to respond specifically to your question on authorization of the film.

Mr. NUNEZ. The film was recommended by the Mississippi State Advisory Committee, which the chairman has pointed out, is a group of citizens of the State of Mississippi who are interested in the issues of civil rights in that State.

The film was supported by our regional office. The staff of the regional office worked very closely with a local television station. In fact, we contracted the actual production, although responsibility for the film was clearly ours to produce. The film has been produced and at this point in time we have received some complaints about it, so we are reviewing it.

The Commission reviewed the film several months ago at one of its meetings. We will be happy to send a copy of the film script to the committee. I think one of the problems with it is that it has been criticized by several sources, one that it went too far, and from another source that it didn't go far enough as a film.

I think it is a modest effort. I believe the contract was for less than $10,000. Frankly, I don't feel it is that critical of the situation in Laurel. It did point out some problems in the area. I know the mayor of Laurel was quite indignant about it. He wrote us a letter and we responded to it.

Senator COCHRAN. Is the Commission ordinarily engaged in supporting State advisory committee requests for film-making of this kind or is this an unusual expenditure?

Mr. NUNEZ. We have over the last few years made similar kinds of films which are in lieu of a written report. It is another way of getting the work of the Commission across to the general public rather than issuing what we call State advisory committee reports. We might do a short film which sometimes gets much more exposure than a written report.

The regional office, as I recall last year, did a report on public employment in Alabama, which was very well received in that State.

We interviewed former Governor Wallace.

ACCURACY OF FILM

Senator COCHRAN. One question that was raised in correspondence to me was about the accuracy of the film itself.

For example, there are several instances, I am told, in the film where the suggestion is made that Federal funds were not sent to assist needy persons in the community. Yet, in fact, millions of Federal dollars have been spent on neighborhood redevelopment projects in recent years, with emphasis on the East Side of town. The film talks about the town being divided by railroad tracks. The East Side of town is basically the minority area. Federal funds in this area have been spent there.

You have written me a letter saying, in effect, you did not show the full picture concerning the use or allocation of Federal funds by the city government for the benefit of minority citizens.

So my question is, do you feel the film meets its obligation to accurately reflect the allocation of Federal resources by the city government, or was it not intended to accurately reflect the allocation of those resources?

Mr. NUNEZ. As a result of complaints, Senator, I have instituted a full inquiry as to the exact methodology of the film, keeping in mind it was not a major production.

Senator COCHRAN. It was major for them.

Mr. NUNEZ. It has gotten a lot of exposure.

Senator COCHRAN. It is the only film about Laurel in existence. They are worried about it.

Mr. NUNEZ. We are looking at it. I will be happy to give you a full report on it.

Senator COCHRAN. One other question, the fact there may be some merit to these complaints, and this is the reason I raise it because it does appear these complaints have merit, in answering a question about minority representation on the Laurel Housing Authority, for example, one resident in the film is shown saying, and I quote: "We won't have a black on that board until you get a black city commissioner and with the present form of government, we can't do that."

That is the end of the quote. And then in the transcript of the film, of which I have a copy, there is a footnote in the back that wasn't shown on the film. It is a footnote to the transcript, which says a black man currently serves on the board of housing authority.

I just wonder, is the Commission, by permitting the film content to go unamended when the facts were opposite from what this witness in the film is saying, an obvious or intentional misleading of those who will be watching the film, assuming that there is no minority representation on the city housing authoirty, and, moreover, it won't be possible unless the city form of government is changed.

Mr. NUNEZ. The advisory committee takes responsibility for producing the film and the film is then submitted to the Commission for reaction.

I think that it is before the Commission at this point in time. All of these issues will be reviewed by the Commissioners themselves. The way our system works, the advisory committees are advisers to the Commission, so the film in a sense is advisory to the Commission, telling them what the situation is in the city of Laurel and what action they are recommending, and then it is up to the Commissioners to make an assessment of the film.

We will share a memorandum with them and make a recommendation of what further action might be taken.

SELECTION PROCESS

Senator COCHRAN. I would like to know what the recommendation is. One other aspect that troubles me personally, in a letter that I received from the Commission, it was stated that it went through a selection process trying to find a typical Mississippi town to focus attention on with a film of this kind.

There were some 20 towns in the selection process which had more than 15,000 inhabitants, more than 30 percent of the population black, and using an at-large system to elect local officials and who were receiving Federal money but weren't involving any court action at this time.

And the letter tells me a list of 20 municipalities fit this category and that Laurel was selected. It seemed a little unusual to me that that many Mississippi towns would fit that category, so we checked into it and found that only 2 towns, not 20, fit that category.

One other problem, of course, that is a Republican administration. I know that didn't enter into the thing at all. The mayor is Republican. I know you didn't look at that. Another issue involves a recent Supreme Court case on the subject of mayor and commissioner form of government, *Mobile* v. *Bolden*, answered a question that seems to be argued by the film. That may be the reason for the film being made. I don't know this. There are other suits in a couple of cities, Jackson, our most populous city, being one. The city is being prosecuted by Frank Parker, who is a very capable civil rights lawyer in our State.

He also is a member of your advisory committee. I wonder whether or not the making of the film, focus of attention is part of an argument in the city of Jackson case or as part of the argument in the *Mobile* v. *Bolden* case or any other case that is pending in court right now, whether this is part of the litigation procedure, whether you would be aware of this?

Mr. NUNEZ. No, Mr. Parker is a member of our advisory committee in Mississippi. The committee makes a recommendation to do a project in the State of Mississippi. It is forwarded to the regional director and the regional director forwards it to us in Washington, where we give approval and allocate funds for the conduct of the project. It does have that review process, basically after it is approved, it is the responsibility of the advisory committee with the support of the staff of that regional office to conduct the project. At the completion of the project, it then comes back to Washington for final recommendations on what to do. We are at that stage at this point in time.

Senator COCHRAN. I assume there is not an effort to influence action by the Congress to use appropriated funds, is it?

Mr. NUNEZ. No.

Senator COCHRAN. For instance, the extension of the Voting Rights Act or amendment to the Voting Rights Act?

Mr. NUNEZ. There is a study on the Voting Rights Act. This was not part of it.

COMMISSION ACTION ON LAUREL

Mr. FLEMMING. I might say I am aware of the correspondence relevant to this particular matter. Correspondence, as Mr. Nunez indicated, was addressed to us by those who feel it went too far and those who felt it didn't go far enough. I am also aware of the fact Mr. Nunez, as the Staff Director, has initiated an investigation of the whole project. He plans to report to the Commission the results of the investigation. As he indicates, the Commission always considers very carefully the reports coming to us from our State advisory committees. We certainly will probe the various points of view expressed, and the results of his investigation, very, very carefully;

When the Commission has reached a conclusion, we will see that our conclusion is made available to you, and the reasons for that conclusion.

Senator COCHRAN. And the buck stops at you?

Mr. FLEMMING. That is right.

Senator COCHRAN. Don't lay it off on the committee?

Mr. FLEMMING. No. No. It is an advisory committee to us. Mr. Nunez has accurately described how the project got under way, how it was initiated and how it was undertaken. But a report of a State advisory committee is a report to us and it is an advisory report to us. We then have to assume responsibility for what is done with the advisory report. We all arrive at conclusions regarding this particular report, and we will set forth our reasons for our conclusions, both to the State advisory committee and to persons who have raised these issues with you and to persons who have raised issues on the other side of the controversy.

Senator COCHRAN. One last question, who owns the film, is it yours?

Mr. NUNEZ. It is a contract.

Senator COCHRAN. Any further release would be done under your authority and your direction?

Mr. NUNEZ. Yes.

Senator COCHRAN. Thanks, Mr. Chairman. I appreciate you letting me go first.

VOTING RIGHTS ACT

Senator WEICKER. Thank you very much, Senator.

Just a couple of questions. First of all, you indicate that there is going to be a report or a major study on the Voting Rights Act. It will be completed in 1981. I am sure you are aware the battle has already started and that I think that ought to be one of your priority projects. Even now the lines are being drawn on this. I think it would be helpful to both sides to have the Commission's observations.

Mr. FLEMMING. The draft report will be before the Commission at our May meeting, which is the early part of May. After we have had the opportunity of considering that draft, I will be in a position to testify before congressional committees regarding the report in behalf of the Commission.

It is our understanding the first hearings probably will take place toward the latter part of May.

APPROPRIATION RIDERS

Senator WEICKER. You also state in your report that you consider school desegregation as one of the important issues, if not the most, important issue in the field of civil rights. As you know, we went through an exercise of dubious distinction at the tail end of the last session of Congress. The Senate of the United States voted against an amendment which said the Justice Department can enforce the Constitution.

I am wondering whether or not this area is one which is going to require additional Commission action or report. I clearly think the motion is in the wrong direction at this stage of the game. I am not referring to any particular remedy.

Boy, I tell you, when you get to the point where the Justice Department can't enforce the Constitution of the United States, I would say we are all in tough shape.

Mr. FLEMMING. Senator Weicker, we agree with you completely. When that action was taken by the Congress, we addressed a communication to the President, urging him to veto that legislation. He did veto it. Prior to that time in October of last year, we issued a public statement in which we called attention to a series of appropriation riders which we felt were anticivil rights riders. Eight, at that time, had passed the House of Representatives. One of them, of course, was the Eagleton-Biden rider and the other one was the rider dealing with the use of appropriations by the Department of Justice. At that particular time, we stated that this was just a back-door way of repealing the basic civil rights laws. We regarded it as a very serious development.

We continue to regard it as a very serious development. We will continue to express ourselves on that approach if there is development along this line in the present session of Congress.

The present Secretary of Education made an appearance on "Meet the Press" and made some statements which concerned us. We have addressed a letter to him setting forth our views on this basic issue and asking for further explanation of his views, thus indicating a willingness to talk with him about the issue. But there isn't any question as to where we stand.

We are opposed to the Eagleton-Biden rider which ties the hands of the Department of Education. Obviously, we are opposed to the kind of a rider attached to the appropriation bill of the Department of Justice.

As you know, there are other riders that we oppose which also clearly have to be watched. It is a technique that is really disturbing to us because typically these riders get attached without any hearings. People don't have the opportunity of coming in and expressing themselves.

Some of the people proposing the riders realize probably that a proposed outright repeal of the 1964 Civil Rights Act wouldn't get very far. This is another way of accomplishing the same objective.

Senator WEICKER. I think it is clear under a Democratic-controlled Senate, it would be difficult times for civil rights. I can assure you it isn't going to be any the less difficult under a Republican-controlled Senate. I think these are very crucial times in the entire area of civil rights, especially for your Commission. I gather you are satisfied with your budget?

Mr. FLEMMING. We feel we can do our job with what has been proposed.

Senator WEICKER. I would like to thank you again. You started out, did you not, serving President Eisenhower, his administration?

Mr. FLEMMING. Actually, I started out in 1939 as a member of the Civil Service Commission under President Roosevelt. But then I did serve as Director of Defense Mobilization and Secretary of Health, Education, and Welfare under President Eisenhower also.

Senator WEICKER. I have had a chance to hear you over the years. I just think you are a great credit to whomever you have served and especially to the cause of civil rights.

Mr. FLEMMING. I appreciate your comment.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. Thank you very much. I will have other questions which I will submit for the record.

Mr. FLEMMING. Thank you.

[The following questions were not asked at the hearing but were submitted to the Commission for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WEICKER

We have discussed many times during the last few years my concerns regarding the application of our Equal Employment Laws to the Legislative Branch. Obviously, this is a sensitive issue because of the issues of separation of powers between the Executive and Congress. Be that as it may, I remain concerned that some mechanism be established so that Congress operates under the same law with regard to equal employment as everyone else.

Last year, we directed the Commission to draw-up a plan for conducting a survey of Legislative Branch offices. There was discussion of this issue in the Floor debate in the Senate.

What is the status of this plan and when will you be prepared to submit it to the Subcommittee?

I understand that there is no funding requested by the Commission to conduct the survey and that you will address the issue of funding when the survey plan is completed, is that correct?

We have given considerable attention to the basic policy issues and technical problems involved in this project. We have examined the work being done by others in this area, and we have concluded that for practical reasons consideration should be given to the use of a legislative branch agency, such as the GAO, for conduct of the survey. The Commission would then be in a position to relate the results of the survey to its report, Extending Equal Employment Opportunity Law to Congress. We have discussed the project with GAO staff. We are prepared to discuss with the Committee and its staff the project, its costs, and ways to overcome existing difficulties.

The January justification anticipated a two-day consultation focusing on housing discrimination problems. This would have been followed by a field investigation, hearings, and a statutory report on housing access and availability to lower income minorities, women, and elderly persons.

With the budget cuts affecting federally assisted housing programs, don't you feel that a report of this kind can be even more important now for policy-makers in the Executive branch and Congress?

How much was originally budgeted for this project?

The consultation focusing on housing access and availability will still be held in Fiscal Year 1982. Depending on what we learn in the consultation we may continue on with a field investigation, hearings and a statutory report in subsequent fiscal years.

The original cost estimate for the project, exclusive of the consultation, was $321,000.

Following the civil disturbances in Miami last year, the Civil Rights Commission held hearings to explore the Federal Government's strategy for dealing with the types of issues which gave rise to that situation. Additional hearings planned for Fiscal Year 1981, have now been cancelled.

Have these hearings been cancelled in order to make necessary budget reductions?

The original budget had contemplated following up on these hearings with a statutory report on community disorders. Has this report also been scrubbed or will you go ahead with a report based on information already available?

Budget reductions were only a part of the Commission's consideration in changing its previously announced hearing agenda. When the Commission announced its 4-day hearing on the State of Civil Rights in Miami last year, it also announced that additional hearings dealing with these same issues would be held in other major cities. As a result of the Miami hearing the Commission identified several major factors as the underlying causes of Miami's civil disturbances. One such factor was the lack of minority economic development. Thus the Commission has decided that, rather than hold another 4-day hearing, the next hearing should be a 2-day hearing focusing on urban minority economic development.

Preparation of the statutory report on community disorders is still underway. It will be based on the field investigation and hearings in Miami.

Your original Fiscal Year 1982 budget request identified 270 positions for both Fiscal Year 1981 and Fiscal Year 1982. The revised justification indicates that your 1981 personnel ceiling is 256 and in 1982 it is reduced to 248 Both figures are below the actual 1980 figure of 285.

Where will these personnel reductions be made?

What effect will these reductions have on the operations of the Commission?

To what extent did you participate in determining the extent of these reductions?

The position reductions will be absorbed through attrition in activities as indicated:

Activity	Positions 1980	 1981	 1982	 Change
Reports, studies and program monitoring	54	47	45	-9
Hearing, legal analysis and legal services	38	34	33	-5
Field operations	106	97	96	-10
Publications preparation and dissemination	23	20	19	-4
Federal program evaluation	25	23	22	-3
Liaison and information dissemination	29	25	23	-6
Clearinghouse library	10	10	10	-
	285	256	248	-37

In Fiscal Year 1981 the reductions will have the following effects on the operations of the Commission:

The Minorities and Women in Upper Management Positions in Private Industry project will be dropped.

The second hearing on urban disorders will not be held. Instead we will hold a hearing of shorter duration in a Northeastern city on minority economic development.

Fewer State Advisory Committee meetings will be held due to travel curtailment. This will result in approximately 5 fewer State Advisory Committee and regional office reports and monographs.

The number of publications edited, illustrated and distributed will be decreased.

Three fewer analyses of agency regulation will be undertaken, one less briefing paper prepared and two fewer agencies monitored as part of our Federal program evaluation effort.

Commission exhibits will be displayed at fewer conferences. Out-of-town exhibits will be curtailed in favor of Washington exhibits to reduce travel.

In Fiscal Year 1982 the reductions will have the following effects on the operations of the Commission:

The study on Minorities and Women in Upper Management (dropped in Fiscal Year 1981) had originally been planned to continue through Fiscal Year 1982.

The hearing on Housing Assistance and Availability will be deleted. Another hearing to last one less day will be substituted.

The number of State Advisory Committee meetings and activities will be reduced resulting in approximately five fewer reports and monographs.

The number of publications edited, illustrated and distributed will be reduced.

In the Federal evaluation area, approximately five fewer agencies will be monitored and the number of reports and briefing papers will be reduced by two.

The consultation on the Equal Credit Opportunity Act will not take place.

The Commission exhibit will be shown at fewer conferences.

Approximately 1,000 fewer library books will be purchased.

We did not participate in determining the overall number of permanent positions to be reduced. The decisions on which programs should be eliminated or curtailed to absorb the position reduction were made by the Commission.

Your budget justification (page 34) refers to assistance provided to the State Department regarding the International Helsinki Final Agreement. The Commission on Security and Cooperation in Europe will be appearing before this Subcommittee next week. To what extent are you involved in the Helsinki agreement follow-up? What mechanisms exist to assure that your work, that of the State Department and of the Helsinki Commission are coordinated?

The U.S. Commission on Civil Rights staff briefed State Department staff preparing for the Madrid conference on two U.S. civil rights issues which might possibly be raised: the rights of American Indians and the rights of prisoners. The Commission also provided the State Department staff with copies of several of its publications, including: American Indian Civil Rights Handbook, Getting Uncle Sam to Enforce Your Civil Rights, and the proceedings from the consultation on Religious Discrimination: A Neglected Issue. (Among other issues, the last dealt with the rights of incarcerated persons to observe and practice the obligations of their religious faith).

Recently, the Commission on Civil Rights provided the staff of the Commission on Security and Cooperation in Europe (CSCE) with the newly revised Civil Rights Directory-1981, so that CSCE might add domestic civil rights agencies to its mailing list.

We are in regular and continuing communication with the Commission on Security and Cooperation in Europe, the Department of State's Bureau of Human Rights and Humanitarian Affairs, the U.S. Citizens' Committee to Monitor the Helsinki Accords (in N.Y.), and the Washington Helsinki Watch Committee for the United States (in D.C.) so that we are in a position to know of the activities of these various groups and to be able to respond to inquiries and requests for information. We have found that such informal liaison keeps each agency abreast of the activity of the other agencies and enables the others to draw on Commission information as needed.

The reductions in the revised 1961 budget have caused you to scrap the project dealing with Minorities and Women in Upper Management Positions in Private Industry. Do you have plans to do this work in the future? What process did you use to chose this rather than some other project for cancellation?

The proposed project on Minorities and Women in Upper Management was to provide a national demographic profile of upper level management in private industry by race, national origin/ethnicity, sex and religion. The study was also to determine to the extent possible those barriers that may limit access and advancement of minorities and women into upper level management. Potentially costly data gathering problems relating to response rates discovered in the feasibility phase of the project caused the study's indefinite delay. Essentially, the Commission determined that allocation of inordinately high staff and financial resources would be necessary in order to obtain the reliable national demographic profile desired. During a period of severe budgetary constraint, the significantly higher costs associated with the proposed project when compared with other projects under consideration have caused its deletion for this fiscal year. When budget constraints are eased, serious reconsideration of this project will be undertaken.

The regional offices in conjunction with State Advisory Committees have undertaken a wide variety of studies on local issues including: battered women, access to housing, police harrassment. There are, I must confess, a couple which I question. There was a project in New Jersey on affirmative action in the casino construction industry and another in the Southwestern Region on the "impact of energy resource development upon the civil rights of minorities, women, the aged and the handicapped."

First, can you tell us how a determination is made as to what projects will be undertaken?

What is done with the product of these studies and how they are reviewed for possible further development at the national level?

What kind of quality control criteria does the Commission impose on studies and activities of the State Advisory Committees?

Lastly, can you explain the reasons why these particular projects in New Jersey and the Southwest Region were undertaken?

Given the Commission's limited resources this year, is it possible to coordinate the efforts of the regional and state advisory committees to develop necessary information on the community disorder and housing availability projects *sufficient that the Commission can go ahead with its planned reports?*

Some projects are assigned to State Advisory Committees by the Commission to support national projects. In other cases the interests of State Advisory Committees in proposing projects that address civil rights issues on the State or local level are explored and developed under guidance from regional staff of the Commission. If the proposed project is judged feasible and desirable at this level, a "project concept" (mini-proposal) is sent to Washington for review and evaluation. Among the criteria used in this formal review process are the following:

> Are the purposes specific, realistic of achievement and consistent with the Commission's mandate to study, investigate or appraise matters related to possible discrimination on the basis of race, color, religion, national origin, sex, age or handicap, or in the administration of justice?
>
> Are the tasks outlined in the concept relevent to the purposes of the project?
>
> Are appropriate data sources identified and is access to such data assured?
>
> Is the scope of data gathering appropriate and manageable?
>
> Is the problem under study stated clearly and concisely?
>
> Are appropriate leaders, organizations and affected persons identified and will they be involved in the factfinding process?
>
> Are hypotheses and allegations being explored on a deliberately objective basis (i.e., with a conscious effort to solicit evidence from opponents as well as advocates) or is the proposed project simply designed to justify _a priori_ conclusions?
>
> Is the project clearly within the Commission's jurisdiction?

If the project concept meets these criteria it is approved.

The products are sent to the Commission as part of the role of State Advisory Committees to advise the Commission on civil rights developments in the various States and local communities. In some cases the products are transmitted as items of information for the Commission's use in program planning and the development of project priorities at the national level. In other cases, Advisory Committees urge specific action on the part of the Commission in endorsing particular findings and recommendations and conveying them to appropriate entities of the Federal Government.

In the latter case, the requests for action are reviewed for their consistency with Commission policy and jurisdiction, as well as their appropriateness in terms of the legal authority residing in those agencies or departments of Government that are being asked to implement the recommendations.

In formal meetings of the Commissioners these recommendations are reviewed and the Commissioners decide to take whatever action they deem most appropriate.

In addition to those criteria and procedures mentioned above, there are several others that play an important role in the area of quality control. Among them the following are most significant:

> Each regional office has an attorney who advises staff and Advisory Committees of the limits of jurisdiction and the adequacy of evidence.
>
> The attorney also reviews all reports for legal sufficiency and is responsible for ensuring that staff and Advisory Committee members afford to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in a report the opportunity to respond in writing to such materials. Affected agencies and individuals are given a similar opportunity to review the draft report and make comments.
>
> Post-publication reviews are made in headquarters of Advisory Committee reports. The results of such reviews are sent to the regional offices with specific instructions to use the material as a way of improving reports. This after-the-fact procedure is predicated on a conscious attempt to provide as much freedom as possible to the Advisory Committee to produce their own products and truly function as the unimpeded grass-roots "eyes and ears of the Commission." Over time, however, we believe this education effort will serve to encourage increasingly vigorous analysis and effective reports.

The interest of the New Jersey Advisory Committee in Atlantic City was stimulated by a group of interfaith religious leaders of the city that became aware of growing concerns among minorities, women and the elderly about perceived discrimination in a variety of forms. During the campaign to legalize casino gambling and develop the city's master plan, promises were made to these groups in particular of vastly improved employment opportunity. According to the community leaders who contacted the State Advisory Committee, these groups were becoming increasingly fearful that the promises were hollow and that the potential for employment and economic development would not be realized because of alleged discrimination based on race, sex and age.

In response to these expressions of alarm, the Advisory Committee held a series of community forums in which elected and appointed Government officials as well as citizens were asked to comment on the real and perceived impact on minorities, women and the elderly of plans for the physical and social development of Atlantic City.

As a result of these opportunities to express and exchange ideas, the Advisory Committee concluded that one area most promising of further inquiry related to allegations of employment discrimination in the building trades. A study concept was developed, sent to headquarters, and approved as a project falling clearly within the Commission's jurisdiction.

With respect to the Rocky Mountain Region's studies on energy and civil rights, the course of development and approval was quite similar. Energy resource development in this part of the country is a boom enterprise, creating not only jobs, but social and cultural changes that could have a disproportionately negative impact on American Indians, other minorities, women and elderly.

The several studies on energy resource development proposed by regional staff and Advisory Committees were designed to determine whether or not the adverse impact upon protected classes, if documentable, was due to historic and continuing forms of discrimination. Once again, factfinding efforts to determine the answer to such questions are not only within the Commission's jurisdiction, but are thought to be especially timely in view of the rapid expansion of energy resource development in the intermountain States.

The community disorder project, although reduced in scope, will result in a report based on findings of the Miami hearing. Additionally, one of the major factors identified as an underlying cause of the disturbances, lack of minority economic development, is being pursued in a separate hearing. A consultation on housing access and availability will be held in 1982. The hearing may be held in a subsequent fiscal year.

State advisory committees will be involved in helping develop information on a local level for both projects. However, we believe that what we propose will result in adequate treatment of both issues without the necessity of turning them into state advisory committee projects completely.

Given the fact that the Department of Education bilingual education regulations have been withdrawn, do you intend to go ahead with your planned project on the implementation of bilingual/bicultural educational programs in school systems undergoing desegregation or do you view this project as even more important?

Precisely because the effectiveness of bilingual education and school desegregation programs is being questioned and even refuted by some members of Congress and the present Administration, a field investigation and hearing by the U.S. Commission on Civil Rights to evaluate the implementation of desegregation and bilingual education programs in a selected representative school system in the southwest would be particularly useful and appropriate. The School Desegregation and Bilingual Education Project will assess the relationship between school desegregation efforts and bilingual education programs, and to what extent these programs have succeeded in remedying the problem of discrimination.

At a time when federal laws and policies in the areas of school desegregation and bilingual education are being reevaluated, this project will be of great assistance to the policymakers by offering current insights on the utility and efficacy of school desegregation and bilingual education programs as tools to eliminate discrimination in our school systems. The Commission statutory report will be an up-to-date case study of the implementation of school desegregation and bilingual education efforts, and will provide recommendations for federal policy in these areas.

The withdrawal of the Department of Education bilingual education regulations does not affect the validity of this Commission project. This step by the Department of Education is an indication of its reassessment of bilingual education as a means to remedy discrimination. The Commission project would assist Congress and the Administration by providing a current evaluation of the effectiveness of bilingual education that will aid them in reaching decisions on this important area which affects a very significant segment of our population.

What effect, if any, will the proposed elimination of Federal funding for the Legal Services Corporation have on civil rights cases nationally?

The Legal Services Corporation (LSC) estimates that legal services attorneys closed over 1.2 million cases during 1980. Approximately 5.2% (62,217) of these closed cases appear to have involved civil rights issues or matters peculiar to groups specified in the Commission's statute. LSC categories for such legal problems and the percentage of cases falling within those classifications include the following: employment discrimination (0.6%); spouse abouse (1.4%); immigration/naturalization (1.1%); mental health (0.7%); prisoner's rights (0.1%); physically disabled (0.1%); indian/tribal (0.3%) and other individual rights (0.5%).

Even on claims involving important civil rights issues and substantial sums of money, legal services attorneys are frequently the attorneys of last resort who begin litigation because of the private bar's initial lack of interest. For example, the Maine Indians tried unsuccessfully for nine years to obtain private counsel to press their land claims. In the end, legal services attorneys were retained and brought the litigation. Although many other parties have since entered the case on the side of the Indians, including the United States, the poverty lawyers continue to be actively involved in the litigation.

Questions Submitted by Senator Hollings

According to its budget request, the Commission has prepared numerous studies and reports. It is not clear, however, what specific impact these activities had in terms of changes to laws and regulations.

- *What specific changes in laws and regulations have resulted from the Commission's past studies and reports?*
- *What impact do you foresee from current efforts, such as the report on hate groups and the religious discrimination monograph?*
- *What kinds of mechanisms does the Commission have to follow up on its recommendations?*

In 1980 the U.S. Commission on Civil Rights began developing a systematic program evaluation process aimed at assessing the use and effectiveness of its reports and recommendations. This effort is still in its initial stages and is limited by the fact that the Commission has been unable to identify appropriate precedents for such an effort by either Federal or private agencies engaged in policy research. The Commission has found, in fact, that a number of groups inside and outside the government are looking to the Commission for leadership in this field.

It is evident that the Congress, Federal agencies, and organizations and individuals working in civil rights have used Commission reports because of their extensive documentation. Nevertheless, it is difficult to validate the connection between specific recommendations and specific results, although the Commission has attempted to do so for a number of years. In 1972 the Commission first compiled a list of recommendations and actions taken on those recommendations for the period 1959 to 1971, including recommendations from its numerous reports on voting rights, school desegregation, housing, employment and the administration of justice. This was the agency's first assessment of its work, and the voluminous material developed at that time was subsequently updated in 1975 and again in 1977. The present evaluation effort will bring together all previous recommenations, recent recommendations, and a more effective evaluation process.

In some cases where the Commission has informally evaluated the impact of its work, it has found that its recommendations have led to specific visible results which reflect the Commission's influence on their face. For example, the Commission's report on Social Indicators of Equality for Minorities and Women (1978) has been used directly by the Federal Interagency Committee on Social Indicators and the Interagency Task Force on Urban Data in a joint report for the Census Bureau, Social Indicators III. Furthermore, in 1980 the National Academy of Sciences began comparing the conditions of minorities and women to majority (white non-Hispanic) males for indicators of equity in education, as recommended in the Commission report.

However, it is frequently more difficult to link specific recommendations with the results of complex political decision-making processes. This is illustrated by the Commission's reports on The Voting Rights Act: Ten Years After (1975) and To Preserve, Protect and Defend the Constitution, Volume VII of The Federal Civil Rights Enforcement Effort (1977). The Commission was asked to testify extensively before the Congress on the voting rights report, and some Members and their staff have indicated that this report served as the basis for extension of the Voting Rights Act. The enforcement effort volume recommended that the Office of Management and Budget (OMB) create its own civil rights division and that Federal agencies be directed to submit information on the status of their civil rights programs to OMB; both steps were subsequently taken. While the Commission believes that in each of these cases its recommendations led to specific results, the Commission also believes that such a statement could be more fully documented with a detailed evaluation study and perhaps even interviews with the decision-makers involved.

Given this qualification, the following examples of recent Commission recommendations and subsequent results give some indication of the use and effectiveness of Commission work:

- The Age-Discrimination Study (1977), mandated by the Congress, offered a number of recommendations that were incorporated by the Congress into the 1978 Amendments to the Age Discrimination Act of 1975. These included specific changes related to the right of persons aggrieved by violations of the Act to institute civil suits in courts of competent jurisdiction and specific language related to administrative sanctions for Federal departments and agencies when dealing with violations of the Act that may be applied without terminating or interrupting services to eligible persons.

- Following the Hearing before the U.S. Commission on Civil Rights, Seattle, Washington (1977) and the Hearing before the U.S. Commission on Civil Rights, Rapid City, South Dakota (1978), in regard to American Indian fishing rights and other issues in the State of Washington and American Indian issues in South Dakota, the Department of Justice filed suit on subject matter developed at the hearings.

- To Eliminate Employment Discrimination: A Sequel (1977) recommended consolidation of Federal equal employment enforcement efforts. The President's reorganization consolidated within the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP) enforcement responsibilities under Title VII and Executive Order 11246, respectively.

- Last Hired, First Fired: Layoffs and Civil Rights (1977) recommended that EEOC issue guidelines concerning disparate impact of seniority-based layoffs on minorities and women, specifying alternatives to such layoffs. Such guidelines were issued in 1980.

- In 1978 the Commission wrote the Secretary of Health, Education, and Welfare (HEW) to criticize the failure of the department's Office for Civil Rights (OCR) to publish standards for Title VI compliance in vocational education. HEW issued proposed vocational·education guidelines in late 1978. The Commission commented on those proposed guidelines, and HEW made appropriate changes in its final guidelines consistent with Commission recommendations.

- The Federal Fair Housing Enforcement Effort (1979) offered recommendations for amending Title VIII of the Civil Rights Act of 1968 to provide a stronger enforcement mechanism. These recommendations were adopted in part by the House in the last session of Congress but failed in extended debate by the Senate. However, similar legislation was introduced in the Senate in February 1981.

- In commenting on proposed agency regulations in 1979, the Commission urged the EEOC to revise its Affirmative Action Guidelines to encourage affirmative action in employment to remedy "societal" discrimination as well as "arguable violations" of Title VII of the Civil Rights Act of 1964. These changes, adopted by the EEOC, made the Guidelines consistent with the subequent Supreme Court decision in United Steelworkers of America v. Weber.

- Equal Opportunity in Presidential Appointments (1980) urged The White House to improve reporting of the race and sex of Presidential appointees and recommended a breakout of full-time, as opposed to part-time, appointments. The White House improved its reporting, consistent with Commission recommendations, beginning in October 1980.

- Enforcing Title IX (1980) offered numerous recommendations for improvement in HEW's enforcement of that statute. Consistent with the Commission's recommendations, OCR developed a compliance review schedule based on more realistic estimates of staff productivity, allocated funds for Title IX technical assistance, and published another digest of policy-relevant case memoranda. Other steps were also taken consistent with Commission recommendations.

- The Commission wrote to the Community Services Administration (CSA) in 1980 to recommend revisions in that agency's proposed amendments to its civil rights regulations designed to implement Title IX. GSA adopted virtually all the Commission's recommendations in its final amendments. The amendments are now under review by the Department of Justice.

- The Commission wrote to the Secretary of Education in 1980 about the need for policy to clarify schools' responsibilities to provide educationally related aids and services under Section 504 and also to clarify the relation between their responsibilities under Section 504 and the Education for All Handicapped Children Act. In late 1980 and early 1981, OCR published three policy interpretations of requirements covered by both statutes, one of which concerned schools' responsibilities for providing a specific educationally related service.

- In 1980 the Commission wrote to the Department of Justice to support proposed Executive Order 11250, which vests in the Attorney General authority for coordinating enforcement of Title VI, Title IX, Section 504, and other program-specific nondiscrimination provisions. However, the Commission recommended revisions to avoid shifting responsibility for developing sound enforcement programs from the agencies that administer Federal financial assistance to the Attorney General and otherwise to clarify the Attorney General's coordination responsibilities. The final Executive Order included clarifications the Commission had recommended. The Justice Department also developed plans to implement the order, including a schedule for issuing new coordination regulations, which the Commission had called for.

- The Challenge Ahead: Equal Opportunity in Referral Unions (1976) was cited by the Supreme Court of the United States in 1979 in United Steelworkers of America v. Weber. Minorities and Women as Government Contractors (1975) was cited by the Supreme Court in 1980 in Fullilove v. Klutznick. These reports and Social Indicators of Equality for Minorities and Women (1978) were extensively cited in the briefs of the parties and amici curiae in both of these cases.

The Commission has made many other recommendations of a technical nature for improving civil rights enforcement activities concerning Federal sector employment, enforcement of the Equal Pay Act, and other areas. To Eliminate Employment Discrimination, Volume 5 of The Federal Civil Rights Enforcement Effort (1977), contained many such recommendations which EEOC and OPM continue to implement. Most recently, for example, EEOC issued its affirmative action instructions to Federal agencies, which include a requirement that agencies review annually their ultimate hiring goals and report on the extent to which those goals have been revised. As recommended, EEOC is also providing agencies with technical assistance in setting goals and timetables for all job categories, including Senior Executive Service and all supervisory and managerial positions.

In addition to these, recommendations in other areas also have received favorable action. For example, in 1980 the Commission commented in detail on the Department of Justice's plans for implementing Executive Order 12250 (coordination of anti-discrimination enforcement) and has been told that a number of suggestions were adopted by Justice. (The regulations are presently frozen so no final issuance has occurred.) OMB staff followed some of the Commission's suggestions for improving data collection for the Special Civil Rights Analysis and relied on the Commission's analysis of the Department of Education's Fy 82 budget submission rather than doing its own. Commission staff provided major technical assistance to Department of Health and Human Services contractors working on implementation of the Age Discrimination Act, thereby shaping the nature of the reports and informational material to be prepared by the contractors.

The program evaluation process presently being developed by the Commission will provide an extensive and systematic assessment of the use and effectiveness of reports and recommendations, as well as greater documentation. It will also include impact evaluation of the Commission's numerous State Advisory Committee reports, examples of which have not been included here.

The Commission is presently conducting two projects on hate groups and racially and religiously motivated violence. The first is a study which will describe the nature and activities of such groups. The second is a field project, being carried out by the Commission's Regional Offices and State Advisory Committees, which will explore the response of community leadership to such groups in five or six cities throughout the country. As a result of these projects, the Commission will be able to provide documentation of recent increases in violence directed against racial and religious minorities, the groups involved in instigating the violence, the views of local leadership regarding the underlying causes of violence and support for the groups identified, and effective responses to these groups. Based on the results of these two projects, the Commission will determine whether to hold an FY 82 consultation or hearing on this subject, which would in part examine the role of the Federal government in dealing with hate groups and violence.

Studies and reviews on a wide variety of local issues (such as battered women in Hartford and affirmative action in the casino construction industry) are undertaken by the regional offices in conjunction with the State Advisory Committees. There are few trends in the subject matter reviewed and, therefore, much of the data cannot be used to gain a national perspective of a particular problem.

Considering that more than one-third of the Commission's budget is allocated to the regional offices, shouldn't the regional and state advisory committee projects have a more national focus?

As you know, the State Advisory Committees consist of citizen volunteers. They are not compensated for the work they do, but they do bring to the Commission considerable talent and make significant contributions. The Commissioners believe they have a responsibility to listen to these citizens as they talk about issues they think are important. The Commi-sion also has a responsibility, indeed a valuable opportunity, to solicit their assistance from a national perspective. This two-way process of communication and planning provides a balance in our programming that is beneficial.

One of the examples mentioned, the study of battered women in Connecticut, was part of an effort initiated by the national office. Hearings were held initially by the Commission in Harrisburg and Phoenix on this topic, and as a result of that experience, State Advisory Committees were encouraged to develop follow-up projects in selected localities across the country.

At the present time, in various stages of completion, State Advisory Committees in each region are working on projects that were developed primarily by the national office and assigned to the field. These include a nation-wide examination of Federal enforcement procedures in the area of affirmative action in employment, an evaluation of the Federal and State roles in school desegregation efforts, a follow-up study of enforcement in the area of housing discrimination, and an assessment of stragegies used and/or recommended by community leaders to respond to racially and religiously motivated bigotry and violence.

On other occasions the State Advisory Committees examine what is first construed as a local issue, but a result of the cumulative effort of such reports, or in the course of other facets of their role as advisors to the Commission, the Advisory Committees persuade the Commission that we are dealing with a national phenomenon. Such was the case when, in the process of monitoring hate group activities in local communities, the Commission surfaced a problem of national scope. As a result, the Commission intensified its examina- of hate group activities and eventually engaged the Advisory Committees in the study of bigotry and violence mentioned above.

The Commission will continue to use the existing structure and explore additional ways in which the Advisory Committees and regional staff can engage cooperatively in projects of national significance.

In FY 1982, the Commission plans to undertake projects in areas as varied as housing access, community disorders, and reasonable accommodation.

How does the Commission determine its priorities in selecting areas for review?

The Commission has traditionally worked in six basic program areas: employment, education, housing, voting rights, administration of justice, and multiple issues. (This last area includes issues cutting across several other areas; for example, sources of community disorder.)

Each year the most critical civil rights issues are identified by Commissioners, staff, State Advisory Committee members, community leaders, researchers, and interested citizens. These issues are reviewed to determine their apparent urgency, feasibility for study by the Commission, and appropriate inclusion within the Commission's jurisdiction. A set of issues meeting these criteria is presented by the Staff Director to the Commissioners, who discuss them at a Winter meeting and select those to be developed into project proposals by staff.

In July of each year the project proposals, with attendant costs, are reviewed by the Commissioners and placed in priority order. Those projects falling within the Commission's appropriation constitute the program for that year. These projects generally reflect a balance as to program areas (employment, education, housing, etc.), groups affected (blacks, Hispanics, women, etc.), and types of project (long term study, hearing monitoring, etc.) The program in any given year also includes projects selected and implemented by State Advisory Committees, as well as follow-up to previously completed projects.

On page 46, the Commission states that it plans to conduct several hearings.

- *What criteria does the Commission use to determine when and on what topic a hearing is to be held?*
- *How does the Commission assure that differing views on an issue are presented at a hearing?*

Suggestions for projects involving hearings are developed by staff at part of the on-going program development process. At a program planning meeting the Commissioners review these projects as well as others suggested by the Commissioners. Once a project is reviewed and approved, a project proposal is prepared and presented for final Commissioner approval. Approved projects, including hearings than become part of our Budget Estimate and finally the Request for Appropriation.

Hearing topics sometimes arise outside of the regular planning process. These are generally initiated by the Commissioners. Events in Miami last summer, for example, led to a field investigation and hearing in that city later in the year at the specific direction of the Commissioners.

On occasion a state advisory committee has gone directly to the Commissioners to propose a hearing topic in a particular city that the committee believes warrants their immediate attention. For example, the Pennsylvania State Advisory Committee issued a report on police/community relations in Philadelphia in 1972. When a review of the status of police practices six years later showed massive decline in that area, the advisory committee requested that the Commissioners hold a hearing on the administration of justice in that city. At the Commissioners direction the staff designed the project with hearings in Philadelphia and Houston, Texas.

The Commission tries to hear both sides of every issue at its factfinding hearings. Staff participating in the field investigation preceeding a hearing suggest potential witnesses to the Commissioners who make the final selection. The primary considerating at both levels is to have knowledgeable people who can best articulate their view testify and present evidence. In the event that some person or group feels an issue is not being fully explored, the Commissioners allocate time at the end of every hearing so that anyone who wishes to address the subject matter of the hearing may sign up to present sworn testimony, evidence or a statement to the Commission for inclusion in the record.

FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF ROBERT E. LEE, CHAIRMAN

ACCOMPANIED BY:
- RICHARD SHIBEN, CHIEF, BROADCAST BUREAU
- JOSEPH MARINO, ACTING CHIEF, COMMON CARRIER BUREAU
- RANDY NICHOLS, CHIEF, CABLE TELEVISION BUREAU
- CARLOS ROBERTS, CHIEF, PRIVATE RADIO BUREAU
- JAMES McKINNEY, CHIEF, FIELD OPERATIONS BUREAU
- ELLIOTT MAXWELL, DEPUTY CHIEF SCIENTIST
- KALMANN SCHAEFER, ACTING CHIEF, OFFICE OF PLANS AND POLICY
- MARJORIE REED, ACTING GENERAL COUNSEL
- DON LICHTWARDT, EXECUTIVE DIRECTOR
- THOMAS CAMPBELL, ASSOCIATE EXECUTIVE DIRECTOR FOR OPERATIONS
- PETER HERRICK, ACTING CHIEF, FINANCIAL MANAGEMENT DIVISION

BUDGET REQUEST

Senator WEICKER. The next request is of the Federal Communications Commission. The amount requested is $77,351,000 a decrease of $3,062,000 from the 1982 base and provides for 1,941 permanent positions.

Appearing on behalf of this request is Robert Lee, the Chairman, who is accompanied by various staff members which I will allow Mr. Lee to introduce to the committee. We are pleased to hear your statement. You may submit it in its entirety for the record.

Mr. LEE. Thank you very much, Mr. Chairman.

I am pleased to have this opportunity to review with you the Federal Communications Commission's fiscal year 1982 budget estimates. With me today are key members of the Commission's staff: Mr. Joseph Marino, Acting Chief of the Common Carrier Bureau; Richard Shiben, Chief of the Broadcast Bureau; Randy Nichols, Chief of the Cable Television Bureau; Carlos Roberts, Chief of the Private Radio Bureau; Jim McKinney, Chief of the Field Operations Bureau; Marjorie Reed, the Acting General Counsel and Elliott Maxwell, Deputy Chief Scientist; Don Lichtwardt, Executive Director; Kalmann Schaefer, Acting Chief of the Office of Plans and Policy; Thomas Campbell, our Associate Executive Director for Operations; and Peter Herrick, the Acting Chief of the Financial Management Division.

Senator WEICKER. Who is minding the store? This is the time to take over the airwaves.

Mr. LEE. It is in limbo.

In my statement, I propose to discuss the FCC's budget estimates which were submitted by the President to the Congress on March 10, 1981. The new budget proposes changes to both our fiscal year 1981 and fiscal year 1982 estimates from the estimates provided in the previous administration's January 1981 budget.

With respect to fiscal year 1981, no changes are proposed to the appropriation enacted by the Congress in the last session. It remains at $76,926,000, although the number of approved permanent positions has been reduced from 2,110 to 2,004.

However, the new budget does propose to reduce the amount of our fiscal year 1981 pay supplemental request from the $4,121,000 contained in the January budget to $3,487,000.

For fiscal year 1982, our January budget estimates proposed a total of $82,167,000, which funded 2,110 permanent positions. The revised budget estimates for fiscal year 1982 being submitted today total $77,351,000 and 1,941 permanent positions or a reduction of $4,816,000 and 169 permanent positions from the January levels.

BROADCAST

In our broadcast activity, the revised fiscal year 1982 budget estimates will increase delays in our authorization of service program. For example, we expect the number of pending FM and major change applications to rise by 29 percent over fiscal year 1981 levels with the number of pending TV applications rising by 37 percent over the same period.

In our budget estimates, we included in the auxiliary services program, where our new program to establish low-power TV is located, our expectation that we would have 5,500 requests for new licenses and major changes to licenses pending at the beginning of fiscal year 1982.

We expected to receive 3,500 new applications, dispose of 1,780, leaving 7,300 applications pending. Operating at our fiscal year 1982 budget levels, it would have taken us four years to dispose of this total.

However, due to the very large number of applications for this service that we have received, 4,658 applications are currently on file.

As a result of this, the Commission acted on April 9 to place a freeze on the filing of any further applications for this new service. We are continuing to process the existing low-power TV license requests we received prior to April 9, 1981.

I might say there will be very few of these that will be in motion to be granted.

COMMON CARRIER

In the common carrier area, there will be no funds available for expert economic witnesses to provide testimony for hearings in common carrier cases.

However, I will interpolate here, in the ITT case where there has been some congressional interest, we are meeting tomorrow to divert some funds for expert testimony in this fiscal year in that case.

We anticipate that several major A.T. & T. tariffs filed in fiscal year 1981 will result in hearings in fiscal year1982. Depending on what cases are litigated, work-years from our economic research and analysis program will have to be redirected away from other stated objectives toward assisting the hearings staff.

We also expect to dismantle our pole attachment subprogram and combine the remaining workload with other formal complaints in fiscal year 1982 in order to concentrate the remaining positions in the common carrier activity on our basic mission objectives of tariff review and new service authorization.

The revised budget estimates will contribute to a delay from fiscal year 1982 to 1983 in the implementation of a revised uniform system of accounts for the Bell System.

The number of pending license requests for the various common carrier facilities will continue to increase in virtually all areas, especially in the microwave, satellite, and the mobile services. Through new rulemaking and rule simplification in fiscal year 1982, we hope to be able to lessen the burden of regulation on the public and reduce backlogs by fiscal year 1983.

PRIVATE RADIO

In the private radio activity the new budget estimates will seriously delay our program to examine all of the rules in this activity and eliminate all superseded or outdated requirements, as well as unnecessarily restrictive rules.

In the authorization of service program, we expect the amount of time needed to process a license application in all our services will increase substantially.

For example, in the land mobile services, we estimate the increase will go from a current average processing time of 30 to 45 days to 50 to 70 days in fiscal year 1982. In the Citizens Band and Amateur Services, it will increase from the current level of 14 to 41 days to 60 to 65 days. The compliance program currently focuses on the widespread problem of unauthorized use of frequencies, particularly by Citizens Band operators.

As a result of the budget reductions in fiscal year 1982, this effort will decrease by some 25 percent.

FIELD OPERATIONS

In the field operations activity. the staff levels contained in the new budget will result in some offices being closed in Beaumont, Tex.; Savannah, Ga.; Cincinnati, Ohio; Pittsburgh, Pa.; Washington, D.C., that is the Hyattsville office, and the monitoring station in Anchorage, Alaska.

In addition, in our fiscal year 1981 budget to the Congress we had included a program to phase out five special enforcement teams and reallocate their resources to establish 10 small field offices.

We were undertaking this action to enhance the efficiency of our program and improve the utilization of our funds. Two of these smaller field offices were opened. However, due to constraints inherent in this budget we were required to close Little Rock in March and St. Louis will be closed before the first of May. Each of these offices had only one person assigned to them.

In addition, the following offices which were planned under this program will not be opened: Phoenix, Ariz.; Des Moines, Iowa; Salt Lake City, Utah; Tulsa, Okla.; Nashville, Tenn.; Greensboro, N.C.; Spokane, Wash., and Albuquerque, N. Mex.

Finally, consistent with our fiscal year 1981 budget, the remaining two special enforcement teams, located in Detroit, Mich. and Powder

Springs (Atlanta), Ga., are being closed. Detroit will close before May 1 and Powder Springs later in the month.

The rationale we followed in proposing closure of the existing offices was to consider which of our smallest offices were providing the least additional increment of service. These offices, with the exception of Anchorage, all have less than five positions authorized and many of them have fewer than their authorized number of employees on board due to the impact of operating under a hiring limitation or hiring freeze over the past 14 months.

The Anchorage monitoring station has required a complete physical renovation for several years. The working environment in the main building is uncomfortable and undesirable due to inadequate insulation, lighting, and limited space.

Two of the primary missions of the Anchorage office are high-frequency radio monitoring and mobile radio monitoring. Mobile monitoring requirements are less in Alaska than in other areas of the country, and the mobile monitoring which is required in Alaska will be done from the district office.

There have been few times over the past several years when the Anchorage monitoring station has been required to provide a critical high frequency radio bearing. These are some of the considerations which went into the recommendation that the Anchorage monitoring station be closed.

As a result of the reduction in staff and travel funds, we are, in this budget, reducing our current program of traveling to 77 cities throughout the country on a monthly, quarterly or annual basis to give examinations for amateur and commercial radio operator licenses, to a program level where almost all exams will be given on an annual basis.

In addition, no spectrum occupancy monitoring will be possible. Finally, a program which we have participated in, in conjunction with the Customs Bureau to assure control and proper performance of imported radio transmitters, will be curtailed or abandoned.

SCIENCE AND TECHNOLOGY

In our Office of Science and Technology we will endeavor to meet our international obligations by cutting back in other areas. This is necessary due to the lack of domestic control over international scheduling. We expect, however, to see a reduction in the preparation for, and participation in international conferences.

In addition, several spectrum planning projects may be delayed. We also estimate that delays in action on technical rulemaking for new or modified uses of the radio spectrum will increase from its present average of 30 months or less to 40 months.

Finally, in this activity, we expect increased delays in the processing of authorizations to market new equipment. Currently, we process most requests within 30 days; by fiscal year 1982, we expect this to increase to 60 days. The increase in processing time will have the effect of delaying the introduction of new or modified electronic equipment into the marketplace.

CABLE TELEVISION

In the cable television activity we have experienced a major increase in the number of cable systems requesting approval to use aeronautical radio frequencies. We are making a major effort to insure that radio frequency leakage from these systems does not interfere with aircraft use of these same frequencies.

To deal with this problem we have been forced to reallocate the majority of our staff in this area away from processing cable microwave system requests to the new requests.

As a result of the budget reductions and the leakage problem, a threefold increase in pending cable microwave system license requests is estimated for fiscal year 1982.

In addition, pending economic and ownership studies will be canceled, resulting in delays in the Commission's efforts to reexamine its rules in this rapidly changing sector of the telecommunications industry.

SUPPORT

In the support activity the new budget will result in a general reduction in the legal, policy research, public information and administrative support to be provided to the operating organizations. This reduction will further impair the ability of the Commission's operating programs to meet their objectives.

OTHER OBLIGATIONS

In addition to the position reductions which I have outlined in my statement so far, the revised budget also contemplates fewer nonpermanent personnel and lower obligations funding for fiscal year 1981 and fiscal year 1982. These reductions will include the elimination of our summer hiring program, reductions in nonpermanent employment and delays in making SES bonus awards for both fiscal year 1981 and fiscal year 1982.

Under our other obligation accounts, we have eliminated the fiscal year 1982 funding contained in our January estimates for an automated office information network. This budget also provides for substantial reductions in our contractual policy research program and our technical equipment program.

OFFICE SPACE

The final issue which I would like to address is our office space leasing program. The Commission has used its office space leasing authority over the past 18 months to complete four leases.

Three of these were for office space needed in Washington, D.C. and the remaining lease was for our consolidated licensing facility in Gettysburg, Pa. We expect to open the latter office in early summer, 1981.

As you know, we have been, for the past several months, in the process of finding a site to relocate and consolidate the Commission from its current five locations to one. We have examined several potential locations in Washington, D.C. and in Rosslyn, Va. Currently we have placed a moratorium on any further action on this matter pending the arrival of a permanent chairman.

I might add here, that in view of the delay in the qualifications of the permanent chairman, I have asked Commissioner Washburn to do whatever can be done with respect to preliminary work with the space problem.

PROGRAM EVALUATION SYSTEM

Finally, I would like to add that the Commission has established a program evaluation system; we expect this effort will provide the Commission with solid information on the value of many of the existing programs.

I do not believe that the Commission can continue to operate all of its present programs under the resource constraints that we currently face. I expect that the results of our program evaluation effort will provide the information which the Commission will need to make the hard decisions about which programs can be curtailed or eliminated.

This is a rather pessimistic report, but I might add we are supporting the budget and are going to take actions that will permit us to live within the budget without a reduction in force. I am presenting to the Commission tomorrow a program to evaluate all of the programs we do with a view to finding some that we could perhaps eliminate with or without legislative help.

CITIZENS BAND

The only example that comes to mind is the citizens band. There are millions of licenses. It has long been my opinion that perhaps we could dispense with the licensing of citizens band. An awful lot of them don't bother to apply for licenses anyway. I never thought of it as that critical.

It is a local argument as to whether we can do it without legislative help. I think perhaps we can. I think that completes my statement.

Senator WEICKER. Thank you very much, Mr. Lee. In this budget, how is the backlog as far as AM–FM radio, low power?

Mr. LEE. The backlog is increaseing in all areas. It is a little hard for me to predict. I have given some figures in the statement. If we are able to eliminate some programs, for example, the citizens band, that will save approximately 15 or 16 people who could be directed to other areas of activity. I am hoping that this budget is more pessimistic than what will actually happen.

LOW-POWER TV APPLICATIONS

In the low power field we put the freeze on new applicants. When we adopted this, nobody anticipated the volume. So the freeze means no more new applications will be accepted until the rulemaking is completed, which I think is very appropriate, and with respect to the existing ones, we are going to categorize them into various groupings.

I don't anticipate there will be many of them granted within the next year or so. We have some experts here who could go into that further. If we can design and develop a computer program, perhaps we can improve our situation.

UHF–VHF COMPARABILITY STUDY

Senator WEICKER. The UHF–VHF comparability study, where do we stand on that?

Mr. LEE. That was a very helpful process that I believe you originated. We have completed a good part of it. I think the final report is still a few months away. We are waiting with some, at least in my case, optimistic attitude on my part. The Texas Instruments, the new set we expect in a few months, I hope that will have significant improvements that we could make available.

This is a little gadget, don't ask me to explain it, it is an amplifier that was developed through this. It is very helpful. It is always impressive to bring it up here and have everybody touch it.

Senator WEICKER. This relates to UHF–VHF?

Mr. LEE. Yes. On the whole area of UHF, and for 28 years I have been worrying about this. I am happy to report they are doing very much better financially, and in their acceptance by the public.

Senator WEICKER. I hope so, because the VHF gets worse and worse.

Mr. LEE. I expect to see digital dialing on almost all the sets. It is increasing every year. Like most technological improvements, it starts in the high-cost sets and trickles down. I have a set at home with a digital dial. I just punch numbers, if I want channel 4, I punch 04, channel 26, I punch 26.

I wanted to explain before I started, I think it is important, maybe use the term "lame duck," but that is me, I was grateful to get the appointment from President Reagan as Chairman, but with the full understanding that I would be replaced.

And I further have submitted my resignation to be effective at the end of my term or shortly thereafter, which is June 30. I want you to understand that I am a "lame duck." My predictions I don't have to live with.

Senator WEICKER. Maybe this is the reason why you are also sort of lax as far as this budget is concerned.

Mr. LEE. Take another 10 percent. No, I tell you, when the revised Reagan budget came down, we had some serious meetings. There was a question of having to get rid of 169 positions, something of that order. We certainly didn't want to get into a reduction of force. We had a number of meetings with our staff and it is surprising how cooperative they are with cutting the budget, particularly when it is the other fellow's. But we did work it out and there will be no reduction in force.

We can live with this. We won't be the happiest people in the world, but we want to cooperate in this effort. I spent a good part of my life up here with the House Appropriations Committees as a staff expert. I know Government spending is very serious. Our budget starts at about five digits to the right of the decimal point, but nevertheless we want to do our little part so we expect to live with this.

Senator WEICKER. Senator Rudman?

Senator RUDMAN. I don't have any questions for this panel.

Mr. LEE. I am just going to pray for you fellows.

Excuse me, I would like to submit for the record a letter from Commissioner Washburn, who is expressing his concern at the cuts in the field operations.

Senator WEICKER. The letter will be received and be made a part of the record.

[The letter follows:]

LETTER FROM ABBOTT WASHBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

APRIL 22, 1981.

Hon. LOWELL P. WEICKER,
Chairman, Subcommittee on the Departments of State, Justice, the Judiciary, Commerce and Related Agencies, Senate Appropriations Committee, Washington, D.C.

DEAR MR. CHAIRMAN: Of the several cutbacks to the Federal Communications Commission budget, I am most concerned by the requirement to close six field offices: St. Louis, Mo., Pittsburgh, Pa., Cincinnati, Ohio, Beaumont, Tex., Savannah, Ga., Washington, D.C., and the monitoring station in Anchorage, Alaska.

During my tenure on the Commission, I have had the opportunity to visit field facilities throughout the United States. I have become convinced that these installations best serve the needs of the local communications user in the local areas. It is to our field offices and monitoring stations that people turn when they need information about the Commission or assistance in locating, identifying, and eliminating radio interference. The local offices receive telephone calls, personal visits, and correspondence; and they may attend local meetings to address questions and problems such as police radio causing television interference to a public housing project or senior citizens residential complex; what is low power television and how are applications filed; what was the background on a Commission decision to revoke local station licenses, such as individually held amateur, CB, or even television broadcast; how do you renew a business radio service or amateur station license; how do you work with citizens to find cooperative solutions to television interference.

These facilities, with their specialized direction-finding and monitoring equipment and their expert technical and public assistance staffs, are uniquely in a position to resolve complex interference situations. Thus when a complaint cannot be resolved cooperatively, as is often the situation, the technical staff must place highly specialized equipment into operation where the problem is occurring and when the source is active. The offending signals must be analyzed and traced by radio direction finding to the source, for example, a radio transmitter, a computer device, a CATV system. Tests must be conducted at the source and receiving devices to determine the causes and technical solutions. If the interference arises because of willful misbehavior, the technical staff must operate "undercover" to develop evidence to support sanctions. When the problem is affecting many people, the familiar "hue and cry," it is essential that they be informed of the case status and solutions. Skilled communications staff exchange information with complainants, media, local government officials, and congressional offices.

The work cannot be done remotely. It is a function which must be continued on the local level for the direct benefit of the local communications user and to meet the goal of efficient spectrum management for the whole United States.

In order to reduce to the projected staff level of 441 positions, the Field Operations Bureau will have to close six of its current field offices and the Anchorage, Alaska, monitoring station. I certainly accept the decision to close facilities when it is understood that the Field Operations Bureau has lost 67 positions (nearly 15 percent) of its staff due to various cuts received in the past 12 months. However, the closure of an office in a major city means that thousands of complaints will go unresolved and interference will go unchecked, and in the final analysis, use of the frequency spectrum will be impaired.

The closure of the Anchorage Monitoring Station is even more troublesome. Its geographical location near the North Pole enables that station to hear signals that no other station can hear. Interference emanating from the Eastern Hemisphere will be more likely to go unlocated due to the lack of a direction-finding bearing from Anchorage.

The decision to close Anchorage was made not only on the basis of our staff cutbacks. That facility was scheduled to be completely renovated in fiscal year 1982. Reductions in "other object" funding precludes that renovation and the condition of the facility is such that a safe working environment for our employees cannot be assured.

Finally, I would point out the difficulties of incrementally reducing staff levels in small offices numbering 2, 4, or 8 employees. Where reductions can be sustained in large organizational units, work can be shifted and redistributed. Our field facilities do not have this ability. We really have no option but to close our smallest units, and in so doing, deprive that geographical area of rapid solutions to communications problems.

Sincerely,

ABBOTT WASHBURN,
Commissioner.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. There will be further questions which will be submitted for response to the record. Good luck to you.

[The following questions were not asked at the hearing but were submitted to the Commission for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WEICKER

QUESTION: Mr. Chairman, I understand that you will be leaving in June. When will the new permanent chairman be instated? Do you anticipate any changes in this budget proposal after he takes office?

ANSWER: Yes, I plan to leave the Commission after my term expires this June. The new permanent chairman is expected to be instated in a matter of days. It is my understanding that he is not going to suggest any changes in this budget proposal.

QUESTION: Of your 55 field offices, I understand you will be closing eight of them. What effect will this have on your operations and what would it cost to keep them open? (NOTE: the eight field offices that are closing are located in St. Louis; Little Rock, District of Columbia (Hyattsville); Beaumont, TX; Savannah; Cincinnati; Pittsburgh; and Anchorage)

ANSWER: The annual costs of continuing operation of the eight field installations are shown below. The Anchorage Monitoring Station requires extensive renovation and repair if it were to be kept open, with an estimated cost of $640,000. This would be a one time expenditure, so it is listed separately.

Total positions - 32	
Total Compensation and Benefits	$686,616
Total Continuing "Other Object" Needs	582,465
Total Annual Dollars	$1,269,081
Anchorage Renovation	640,000
Total FY 1982 Cost	$1,909,081

The first effect on operations will involve our recent efforts to reduce travel time and costs, as well as delayed response to consumers, by utilizing a "backyard" concept of field operations. This plan called for a field installation within 150 miles (one half day's drive) of approximately 93% of the population. These office closures mean a step backward from that goal, and the people in the affected areas will be necessarily served from offices a greater distance from them, with resultant increased travel costs, fuel usage, and delay of service to them. At the same time, the position reduction associated with the closures will mean fewer employees to interface with and serve the public in the field, causing some additional delay in response to interference complaints or other services (i.e., license issuance).

The Anchorage Monitoring Station loss will place extra burden on the other west coast stations (Waipahu, HI; Ferndale, WA; Livermore, CA; and Douglas, AZ), but should not affect our safety of life or property monitoring capability. It will reduce the opportunity to get direction finding bearings from over the North Pole, as well as reduce the level of fixed and mobile monitoring in Alaska. Some mobile monitoring can still be performed out of the Anchorage District Office.

QUESTION: In regards to requests for services and application processing, what is the current delay time incurred in meeting these requests?

ANSWER: The Commission has five Bureaus and Offices which either receive requests for service and/or process license applications. The following tables show the current speeds of service within these five Bureaus and Offices for each particular type of request or license application.

TYPE OF REQUEST/APPLICATION	CURRENT SPEED OF SERVICE
Broadcast Bureau	
AM and TV uncontested cases	5 to 6 months
FM uncontested commercial and noncommercial cases	5 to 6 months
AM and FM mutually exclusive cases	12 to 15 months
AM and FM cases involving petition to deny	12 to 24 months
AM, FM and TV license and other category	2 to 6 months
TV contested cases	18 months
Auxiliary cases	2 months
Common Carrier Bureau	
International telephone and telegraph, international earth and space stations, satellite license renewals and modification, and miscellaneous and other requests	60 days for uncontested applications and 180 days for contested applications
Private Radio Bureau	
Aircraft	21 days
Aviation Ground/C.A.P.	42
Ship	35
Marine Coast	18
Industrial (Less Business)	42
Business only	42
Public Safety	48
Land Transportation	39
470-512 MHz	28
800 MHz	24
800 MHz Trunked System	26
Citizens Band	35
Radio Control	35
General Mobile	17
Amateur	25
Microwave	60
Restrictive Permits	35

Office of Science and Technology	
Equipment Authorizations	30 to 60 days

Cable Bureau	
Special Relief Petitions	6+ months
Aeronautical frequency usage notifications	90 days
Requests to begin service-CATU Relay Service	6+ months

QUESTION: How will the reductions in this budget affect your ability to process these applications?

ANSWER: The reduction in this budget will dramatically affect the ability of the Commission to process these applications. With the exception of the Common Carrier Bureau service to the public will be slower.

For those applications processed by the Broadcast Bureau the disposal rate, and thus the speed of service, will drop between 3% and 33%, depending upon the particular service. In the Private Radio Bureau the speed of service will decrease between 50% and 133%, again depending upon the particular service. Assuming the trend of receipts of aeronautical frequency notifications continues, these budget reductions will decrease the speed at which other requests are processed by the Cable Television Bureau by 30%. The time required to process applications for equipment authorizations by the Office of Science and Technology is expected to double from 30 days to 60 days.

QUESTION: I am concerned about the increasing backlog in servicing low power TV applications. According to your budget (Page 36), pending applications will go from 672 at the end of 1980, to 5,558 at the end of 1981, to 7,278 at the end of 1982. If I were to submit an application for a low power television in 1981, how long would it take you to act upon the application?

ANSWER : We cannot specify at the moment an average processing time for low power TV applications. The speed at which we can process low power television applications will depend upon the outcome of the pending rulemaking in Docket 78-253 and the development of appropriate computer programs. The majority of low power applications already submitted are mutually exclusive with at least one other application and we will therefore have to apply some selection procedures to choose among them. Since those procedures are a subject for comment in the rulemaking, we cannot process mutually exclusive applications until that portion of the rulemaking is completed. It would also be helpful if Congress would amend the Communications Act to allow us to select the winning applicant by lottery.

On April 9, we imposed a freeze on the acceptance of new applications except those that meet certain criteria. We expect the freeze to continue until we have completed the necessary computer programming to handle the engineering studies necessary to determine potential interference.

In the meantime, we will process those applications that were accepted prior to the freeze by using the interim procedures set out in the Notice of Proposed Rulemaking in Docket 78-253 and in our April 9, 1981 Order implementing the freeze. These procedures will involve some computer studies but will also require some manual engineering studies and will therefore result in processing rates not as fast as we eventually hope to achieve.

QUESTION: What relief are you seeking to help this rapid backlog buildup?

ANSWER : We have taken a number of steps to control the rapid backlog buildup. On April 9, 1981, we imposed a freeze on the acceptance of new applications that do not meet certain criteria. That action will significantly slow the rate of submission until we have completed some of the other steps mentioned below. The Broadcast Bureau has been engaged in extensive planning to handle the interim processing of applications filed during the rulemaking. The Bureau has started to develop, in conjunction with NTIA, computerized engineering studies that should significantly speed the processing when implemented. The Bureau is also reallocating resources. Two additional work years are proposed to be added to low power processing in the revised budget for FY 82; more were originally proposed.

Ultimately, we anticipate, should we decide through the rulemaking to implement the low power television service, that procedures will be designed to enhance speedy processing and will be in place ready to implement upon adoption of final rules.

QUESTION: I understand that the backlog for low power TV applications is not an isolated case. Your budget indicates that you are building increasingly larger backlogs in AM radio, FM radio, and TV licensing applications. What is the current processing time and what will that time period look like in one year? (1) What does this do to your credibility and effectiveness? (2) What are you doing for this backlog?

ANSWER : The phenomenon which occurred in low power TV, that is, the accumulation of a backlog exceeding 3500 applications for a new broadcast service within a five-month period is unprecedented. This phenomenon is further addressed in response to another question in this series.

In each of the categories referred to -- AM, FM and TV -- significant increases in the rate of application receipts is largely responsible for the increased backlogs. In AM, the Commission, in May 1980, opened the clear channels for additional fulltime stations and lifted filing restrictions on many frequencies adjacent to those clear channels. In addition, countries of I.T.U. Region 2 (North, Central, South Americans and Greenland) are preparing for the Second Session of a Regional Administrative Radio Conference which will attempt to develop an agreement which will supersede our current North American Regional Broadcasting Agreement (NARBA) and our agreement with Mexico. The Commission has encouraged potential applicants to file their AM proposals as soon as possible so that they can be included in the proposed regional assignment plan. These actions will result in a huge temporary increase in application filings over the number normally expected. Therefore, in spite of the record number of disposals predicted in this area during FY 1981 and FY 1982, the backlog is expected to double during FY 1981 (to 618) but is anticipated to diminish to 502 by the end of FY 1982. If receipts settle back to normal levels, steady progress should be made in reducing this backlog.

In FM, the Commission, in Docket 20735,adopted rules to improve the effectiveness of the reserved portion of the FM band. This generated the filing of over 660 applications by Class D noncommercial educational stations over a three-year period. As a result, even with record production levels during FY 80, 81 and 82, the backlog continues to climb. We are confident, however, that once the effects of this proceeding subside, backlog and processing times will quickly be brought down to acceptable levels.

In the case of TV, here again the effects of a rulemaking proceeding are evident in the receipt projections. Our forecasts in this area have taken into account the filing of 100 additional applications during FY 1982 as a result of the current VHF drop-in rulemaking (Docket 80-499). If these additional applications are, in fact, not generated, then the backlog would remain at a more reasonable level.

The current processing times are given in response to another question in this report. Because of the uncertainties involved with the effects of the various rulemaking proceedings referred to above, and the wide variations encountered in processing times for various types (contested, petitions, MX cases, etc.), of applications filed within any particular service, it is virtually impossible to predict what the turnaround times will be for the various categories a year from now. However, in this regard, we have developed, and will continue to pursue, a systematic program of trying to dispose of the oldest cases pending in the various processing categories. This program has had a significant impact on the average turnaround times. We would also note that turnaround times are not necessarily proportional to the size of the backlogs. With filing rates fluctuating rapidly, as in these cases, the relationship between disposal rates and incoming rates significantly affects average turnaround times. For this reason, we do not anticipate serious increases in turnaround times over the next year, and, in some cases, turnaround times may actually be improved in spite of temporary increases in the size of some of the backlogs.

Concerted efforts have been made to increase productivity and thus reduce, or at least impede, the growth of backlogs. On the management side, we have initiated a comprehensive planning process to establish long and short-term goals and objectives. Where these objectives obviously cannot be met, given the existing workload, staff size and processing procedures, alternatives are being developed in an attempt to alter the balance in order to achieve these goals.

Much has been done and is being done to reduce the workload by eliminating or reducing filing requirements. Among these changes was the revision of our long-standing policy regarding radiation restrictions for directional AM stations to eliminate the need for many stations to conduct and file complicated proofs of performance. The rules regarding program test authorizations were relaxed to permit most stations to begin transmitting immediately following construction rather than awaiting Commission approval. Additional workload reduction was accomplished by deleting the requirement for detailed financial showings by many applicants. Other workload reduction measures are in progress.

Many changes have been made to improve efficiency. Processing steps and worksheets have been reexamined to reduce unnecessary or marginally useful work. Significant achievements in automation, particularly with respect to engineering studies have been accomplished. This effort is being continued at an accelerated pace through the conversion of AM radiation patterns to a computerized form and the development of additional computer programs to help process low power TV applications. A new construction permit application form is being developed which should simplify processing and eliminate filing of unnecessary information. Training programs have been developed for engineers and attorneys to improve skills. Many other programs are underway to improve productivity and streamline procedures.

In view of the tremendous progress we have made in improving the efficiency and effectiveness of our authorization of service program, particularly in the face of ever increasing workloads and shrinking resources, and in view of the planning and efforts we are continuing to make toward even more dramatic improvements, we feel confident that our credibility remains beyond reproach and that our accomplishments reflect well upon the skill, dedication and integrity of the employees of this Commission.

QUESTION: Three years ago, the Congress funded a study concerning UHF/VHF Comparability for television broadcasting. I understand that a task force has been working for over two years on this subject and that a report was issued in September 1980. Briefly sketch the results of this study.

ANSWER: While the Task Force analyzed UHF reception problems in the entire system (transmitter, receiving antenna system and receiver), they determined that for better UHF reception, improvements to the home receiving system are much more important than improvements to transmitters or TV receivers.

Several modifications, however, have been proposed to the FCC rules to insure equal quality for both UHF and VHF portions of the television receiver, and to allow maximum efficiency in transmission systems. In addition, a widespread program to inform the public of the gains that can be made in reception quality by observing a few major precepts of home antenna system installation has been proposed.

QUESTION: *How has UHF-VHF comparability been advanced as a result of your work?*

ANSWER: Changes in UHF-VHF comparability are extremely difficult concepts to quantify, let alone assign responsibility for. There are some initial indications, however, that the Task Force's work has had some impact. Firms that manufacture UHF transmitting components and devices have, for instance, begun to express interest in some of the novel technological improvements suggested in the Task Force report. Likewise, some consumer catalogs have begun to highlight specific antennas, transmission lines, and other components as offering advantages in UHF-TV viewing. As more Task Force suggestions are implemented, we will, no doubt, see more concrete advances in UHF-VHF comparability.

QUESTION: *What further work does the task force anticipate conducting?*

ANSWER: Issues still under analysis in the comparability effort include:

1) The results of the improved high-performance television receiver being developed by RF Monolithics.

2) The effect of UHF-VHF channel selectors on comparability.

3) Whether the 12 db "noise figure" (a measure of how well a TV receiver can display a weak signal) limit, overturned in the DC Circuit Court of Appeals in September 1980, should now be reimposed on new receivers in light of recent technical developments.

Also, three reports have yet to be released. One, examining improvements to UHF reception through the use of preamplifiers, highlights the FCC-funded development of a prototype preamplifier. It will be released in mid-May. A second report will analyze possible correlation between UHF viewing habits and channel selectors utilizing data obtained from a contract with the Arbitron Company. The third report will seek to model equipment of both broadcasters and viewers in order to better understand their interrelationships.

QUESTION: *How much do you plan to spend on agency consolidation efforts in fiscal year 1981 and 1982? What are your leasing plans?*

ANSWER: On March 19, 1981, the Commission voted to defer action on relocating its offices to a consolidated site pending the arrival of a new, permanent Chairman. In concert with this action the Commission ordered that the consolidation project, which was then underway, be terminated immediately. No further action has been taken on this project since that date. Given that the new Chairman has not yet joined the Commission, it is not clear whether or not consolidation efforts will be resumed in FY 1981 or 1982. Therefore, we are obviously not in a position to estimate future expenditures which may be associated with our office space leasing activities.

QUESTION: How much was spent on the aborted Rosslyn move?

ANSWER: We paid the Computer Services Corporation, an engineering and architectural consulting firm, approximately $75,000 in FY 1980 and FY 1981, for services rendered which were associated with our consolidation project.

QUESTION: What effects will your recent decision (made yesterday) on Direct Broadcast Satellites have on consumers and broadcasters?

ANSWER: This question was considered at some length in the Notice of Proposed Rulemaking: Direct Broadcast Satellites (Docket No. 80-603). Several potential consumer benefits were identified. For consumers in rural and remote areas not now adequately served by television, there is the prospect of additional service. Further, as the number of channels of programming increases, the diversity of programming can be expected to increase. The additional channels offer the prospect not only of a wider variety of programs but a greater tendency toward specialization of programming. This tendency toward greater specialization should improve the prospects for service oriented toward groups currently not well served. Finally, a direct broadcast satellite (DBS) service might offer opportunities to experiment with or develop new video service (e.g., high definition television).

There is some small chance that a private DBS venture would be a commercial failure. Should this occur, those consumers who voluntarily invest in the receive equipment necessary to obtain DBS service would suffer a loss. This loss is not expected to be excessive since the projected cost of this equipment is no more than three hundred dollars and is partially mitigated by the benefits received by the service while it is in operation. To make known these risks, the Commission requires that the DBS operator warn potential customers of the experimental nature of the service.

At the same time, the typical broadcaster is unlikely to suffer any substantial loss as a result of DBS service. This conclusion is based upon analyses of audience share losses by terrestrial broadcasters due to DBS which were provided by several commenters. Two major studies submitted by commenters -- one by Arthur D. Little, Inc. (commissioned by Comsat) and the other by Kalba-Bowen Associates (commissioned by the National Association of Broadcasters) -- find no basis for the argument that a threat to terrestrial broadcasters exists due to a DBS service. These results are consistent with studies of audience diversion due to cable which were summarized in the Commission's Report: Inquiry into the Economic Relationship Between Television Broadcasting and Cable Television (Docket No. 21284). These studies to not guarantee that every television station will remain viable. However, they strongly suggest that failures attributed to DBS would be few and would not threaten the concept of local television.

QUESTION: Please explain your statement on page four of your budget that reductions in science and technology activity could "severely handicap efforts to implement Direct Broadcasting Satellite systems."

ANSWER: The reduction in the number of positions devoted to National Spectrum could adversely affect implementation or Direct Broadcast Satellite systems by virtue of the necessity to consider the domino effect of reaccommodating existing terrestrial stations from that portion of the radio spectrum to be used by DBS systems to other portions higher in the spectrum.

The 1979 World Administrative Radio Conference allocated the band 12.3-12.7 GHz to the broadcasting satellite service. Because interference is likely to be caused from existing terrestrial microwave stations to special receivers of satellite signals, reaccommodation of existing operations to other appropriately allocated bands is undoubtedly necessary if interference is to be avoided. While some of the approximately 2000 terrestrial assignments may be accommodated in lower bands, notably at 2 and 6 GHz, the majority of the requirements will need to be moved to bands at 18 GHz, 22 GHz, 38.6 GHz or even higher.

Because of propagation anomalies (primarily increased attentuation due to rainfall) at the higher frequencies, the fact that equipment is not readily available for operation at the higher bands, and the fact that there is a need to accommodate uncertain broadcast satellite feeder link requirements in a portion of the 18 GHz band, extensive planning needs to be undertaken if frequencies in that portion of the radio spectrum are to be utilized in the most efficient and effective manner.

Further, increased utilization of the lower frequencies will require an extensive reexamination of existing rules and standards and the development of a comprehensive, rational plan for use of the frequencies allocated to the fixed service.

QUESTION: In support of the proposed rescission of all funding for Public Television Facility Grants ($25.7 million) for FY '81, we are told that direct broadcast satellites will help fill the gap in the delivery of public telecommunications services. How far are we from implementing the direct broadcast satellite system? Do you feel this will obviate the need for public facility grants?

ANSWER: It is very unlikely that any DBS system will be in operation before 1985 and, as a result, should not have any immediate impact on decisions regarding public television. The Commission currently has only one formal DBS proposal before it. This proposal, by Satellite Television Corporation, does not include provisions for "public broadcasting." The Commission was notified informally of a common carrier DBS proposal (Direct Broadcast Satellite, Inc.) that could include provisions for a "public broadcast" type service. Since there is currently no proposal before the Commission that includes a "public telecommunications service," we are unable to assess the effect of DBS on the need for "Public Telecommunications Facilities Grants."

QUESTION: You indicate that one position reduction in the international broadcast activity will restrict the Broadcast Bureau's ability to implement the 1979 WARC and participate in two future conferences? What specifically will be lost if this position is eliminated--particularly regarding 1979 WARC implementation?

ANSWER: The Broadcast Bureau has taken an active role in advising and assisting the Office of Science and Technology (OST) in its rule making procedures to domestically implement the results of the 1979 WARC. The Bureau has been participating along with the OST and other FCC bureaus and government agencies in preparing for the Region 2 Conference on Satellite Broadcasting and the HF Broadcasting WARC and has planned to have at least one member of the staff attend the conferences as a U.S. delegate. The proposed staff reduction would limit the Bureau's ability to assist the OST in the implementation process for the 1979 WARC as well as making it impossible to have a Bureau representative actively participate in further preparation for the conferences or to attend them. The Bureau would be limited to advising the OST and relying upon them to participate on our behalf at the conferences. However, OST's participation at such international conferences is generally limited to their overall coordinating functions. Interests of specific bureaus are represented by that bureau's delegate. Absence of a Broadcast Bureau member on the delegation would limit the flexibility of the OST to reach acceptable compromises at the conferences. In the alternative, an OST representative could be educated in the Bureau's concerns, but the process would be costly in terms of personnel time to conduct that education, and no real savings are likely to result from taking two people (one from the Bureau and one from OST) away from regular work for such training.

More importantly, and aside from participating in 1979 WARC implementation and international conferences the staff reduction would delay our responses to foreign Broadcast station notifications and notifications of U.S. Broadcast stations to foreign nations. Timeliness is very important in this area as it serves as a basis for international interference protection, and is a necessary step before new or improved service could be authorized. On the basis of current staff utilization, the loss of one position in this area would increase notification delays by approximately 20 percent.

QUESTION: What would be the cost savings if Congress eliminated the licensing of Citizens Band Radios? If the license term was extended from 5 to 10 years? If licenses were issued for an indefinite period? In which other private radio services is the extension of license terms feasible? What would be the impact? The resources saved?

ANSWER: Elimination of Citizens Band/Radio Control Licensing. It is estimated that 10 to 12 processing positions would be saved as a result of delicensing the Citizens Band Radio (CB) and Radio Control (RC) Services. However, these savings would not be available in one lump sum because of the need to deal with returns, public inquiries, etc., related to the elimination of the license requirement. It is expected that these positions could be phased out over a three year period. An additional two computer related positions could also be saved as a result of this delicensing effort. In total, it is estimated that a total of 12 FTP positions and $406,000 in salary, benefits and other costs could be saved as a result of this action.

The two computer related positions and approximately five processing positions could be saved immediately. The remaining positions could be phased out over a period of time (2 to 3 years) as inquiries, letters, applications, etc. decreased.

Extend CB/RC License Term from 5 to 10 years. If all new CB/RC licenses were issued for a period of 10 years, it is estimated that approximately one workyear would be saved, starting five years from the date of issue of the 10 year term license. However, it is highly possible that these savings would be offset by the additional resources required to deal with inquiries, questions, etc. There would also be costs related to changes in the computer program and the increased size of the computerized data base.

Indefinite Term. The extention of a license to an indefinite term would produce little in the form of savings for the FCC. Since, on the average, a family moves once every 5 years, a change of address/name notification would most likely be received on approximately the same schedule as a 5 year renewal application would be received. In most instances, more keystroking and processing is required for a change than for a renewal. In addition, the data base would never be purged and its size will continue to increase even though licensees for one reason or another cease operating their radios. As discussed in the previous narrative, additional computer processing costs and file maintenance would be necessary as the file grew, and soon the data base would become unmanageable and quite difficult to use.

Other Services. It is feasible to consider all of the private radio services for an extention of license term; they are all presently 5 year terms. It is estimated that approximately 3 workyears could be saved as a result of this change. These savings would occur as a result of reductions in indirect processing operations such as keystroking, filing, etc. Any savings to the processing operation are offset by the increase in modifications resulting from the extended license term.

A problem which would result by extending the license term, especially for the land mobile services, is that of "paper loading." This means that because license records would remain in the data base 5 additional years or until

license expiration, even though the licensee may no longer be in business, it would appear that there are more licensees using frequencies than there actually are. Since the data base is the only source of this information, frequency coordinators would thus be making assignments based on out-of-date records.

QUESTION: The two person reduction in your cable television rulemaking and research activities seemingly eliminates its ability to accomplish its listed objectives. What specifically will be its activities in FY 1981 and FY 1982? What specific undertaking will be eliminated? (p. 150)

ANSWER: Of the staff devoted to this program, 3 are involved in the administration of the cable television industry equal employment opportunity program, 5 are involved in data collection activies relating to the registration of cable television systems and the collection of financial, operations, and employment forms and data, 2 are involved in technical standards questions relating to cable system radiation and the problems of interference to aviation and other communications, 1 provides economic analysis used largely in connection with special relief matters, and 3 others (including the individual who is acting as Chief of the two divisions) are involved in the staffing of ongoing rulemaking and inquiry proceedings, the interpretation of existing rules, and other matters of general policy import (including analysis of legislative proposals, response to "equal time" and fairness doctrine inquiries, interpretations relating to existing lottery, obscenity, sponsorship identification, and cross-ownership rules, and a large volume of inquiries from municipal and state officials relating to the division of responsibility for the regulation of cable television). The additional positions assigned this program include 2 secretaries and an allocation of positions in the Executive Director's Office, including in particular the staff involved with the data automation operations. While the cable industry has grown at an annual rate of about 10% over the last five years, the staff of this program has declined at approximately the same rate.

A number of the elements of the rulemaking and research program are approaching the level where staff reductions, for all practical purposes, terminate the function, i.e. it is reduced below the "ZBB" minimum level. /It should also be noted that the cable television data collection efforts are somewhat unique in that all the forms used are individually preprinted by the computer with the majority of the data involved before they are sent out. This is intended to ease the burden on the filing party and increase the efficiency and accuracy of the information collection process by eliminating the repetitive filing of information if it has not changed from one year to the next. Because of this unique process, if the staff involved is reduced, information will not simply be received and shelved or boxed but rather the collection process itself will terminate./ For this reason the effect of a staff reduction (in the absence of a change in the functions performed) is reflected disproportionately in areas where existing projects can be delayed or new undertakings not commenced. This includes particularly the initiation of new rulemaking or research projects.

One of these, referenced in the budget submission, involves an evaluation of the consequences of the Commission's distant signal and syndicated exclusivity rule changes. The analysis that went into this rule change decision involved five outside consultants; two economists, a statistician, and three lawyers within the Cable Television Bureau; and additional resources from the Broadcast

Bureau, the Network Inquiry Special Staff, the General Counsel's Office, and the Office of Plans and Policy. Even with this effort, complaints are still heard that additional research should have been undertaken. While a continuing formal research effort in this area would be desirable (and may be mandatory in some areas as additional rule changes are contemplated), to some extent the burden may be shifted to industry groups by requiring that they complete the research necessary to justify any further changes. This cannot be done, however, when the issue is between an industry group and unorganized consumers and, as experience indicates, even industry groups tend to favor the rhetoric of public relations statements over detailed analysis and evidence. Formal follow-up research in this area will be reduced in FY 1981 and FY 1982.

Beyond the existing formal backlog of inquiry and rulemaking proceedings, the use of research and policy resources is largely determined by outside events. Unresolved issues of importance remain in the following areas: 1) signal carriage, 2) technical standards, 3) ownership, 4) federal-state relations, 5) access to, use, and control of non-broadcast channels, 6) television-cable competition, and 7) equal employment opportunities. Although it is difficult to isolate and quantify meaningfully the impact of specific budget decisions on each of these areas, it seems likely that technical standards questions involving radiation would receive the highest priority followed by signal carriage and ownership issues. In all areas there would be some decrease in speed and depth of analysis.

Questions Submitted by Senator Hollings

QUESTION: *How many re-employed annuitants does the Commission have working for it?*

ANSWER: As of March 2, 1981 the FCC has 8 re-employed annuitants. Their names and Bureau/Office are shown below:

OST...............	Garlan, Herman - Electronics Engineer, GS-15
Commissioner Quello's Office...	Ciulis, Ethel - Confidential Assistant, GS-11
	Cordon, Allen - Attorney-Advisor, GS-15
OED...............	Garrett, Mary - Lead Accounting Technician, GS-8
PRB...............	Gaegler, Mary - Clerical Assistant, GS-9
	Letterman, John - General Attorney, GS-14
CCB...............	Lipske, Alexander - Expert/Accountant, GS-15
FOB...............	Sternstein, Sylvia - Attorney-Advisor (General), GS-15

QUESTION: *How many persons have left the Commission since November 5, 1980?*

ANSWER: During the period of November 5, 1980 to February 27, 1981, the Commission lost 70 employees from its rolls. The weekly turnover was as follows:

Week Ending	Number of Losses
11/09	4
11/16	7
11/23	2
11/30	2
12/07	1
12/14	9
12/21	0
12/28	2
01/04	0
01/11	25*
01/18	7
01/25	2
01/31	2
02/09/81 - 2/27/81	7
TOTAL	70

* Unusually high turnover due to a number of employees retiring before the 1/18/71 effective date of changes in the retirement law.

QUESTION: Of the persons who received SES bonuses, how many have since left the Commission?

ANSWER:

Thomas J. Casey--Deputy Bureau Chief (Operations), Common Carrier Bureau

William B. Ginsberg--Deputy Bureau Chief (Policy), Common Carrier Bureau

Frank Washington--Deputy Chief, Broadcast Bureau

Philip L. Verveer--Chief, Common Carrier Bureau
(Received Distinguished Executive Presidential Rank Award)

QUESTION: Since the FY 1980 and FY 1981 objective of "continue public 'outreach' programs" was discontinued for FY 1982, does this mean that the Commission will no longer speak before a "variety of public interest, press and industry organizations?" What will be the travel savings associated with this?

ANSWER: The goal of the Commission remains the development and efficient use of civilian telecommunications systems. Although we have discontinued one of our outreach programs, the FCC Public Participation Workshops, the Commission will continue to encourage public understanding of and participation in FCC actions and rulemakings and to interact with users and providers of telecommunications services, including members and organizations of the public, the industry and the press.

The travel savings associated with the elimination of the outreach program is approximately $17,000.

QUESTION: Why is FCC using contractual personnel to do its EEO investigations? What were the benefits of this approach and what does it cost when compared to using FCC personnel?

ANSWER: It is important for the agency to have well-documented and fully-analyzed investigative reports. Since most EEO complaints are precipitated by some management action involving a personnel practice or procedure, it is imperative that the investigator have a thorough working knowledge of EEO laws and regulations and personnel regulations. It is this combination of experience that the contractual personnel have that makes it more efficient to use them. Instead of merely having summary affidavits, we now have verbatim, sworn statements; documents of evidence; and investigative reports that include background information, analysis of issues (referencing appropriate and applicable regulations/statutes/ practices), summaries of findings of fact, and recommendations for appropriate management action. This enables the deciding official and the complainant to better understand the problems and facilitates the decision making process.

Using contractual personnel has shortened the actual investigative process from several months (usually three to six) to several weeks (usually three) and the cost therefore is generally lower. The average investigation is projected at $2,000.00 per case or the equivalent of a GS-13 salary. Usually the cost of each case is between $1200 - $1600. At the time FCC personnel were used, the investigators were attorneys (GS-14/15) who had no EEO investigative or personnel background.

QUESTION: When is the fee refund program to be completed? When will a new schedule be implemented?

ANSWER: Phase I (over $20.00) will be effectively completed before the end of Fiscal Year 1981. Phase II ($20.00 or less) will be 95% completed during the same time frame. It is our understanding that Congress is considering a legislated fee schedule for the F.C.C. Therefore, we are not now preparing another fee schedule under our existing authority.

QUESTION: What do you expect the resource impact to be if the Commission revises its renewal procedures for broadcast stations, as it is currently contemplating?

ANSWER: The Commission has recently adopted a simplified renewal procedure in which most stations would only file a postcard-sized renewal form with yes/no questions, but a small percentage of randomly selected stations would be required to file "long-forms" and, perhaps, undergo field audits. This procedure would provide the following resource savings over-and-above those contemplated from our radio deregulation activity (see question 8).

License Division: The postcard renewal form, being limited to yes/no questions, could be readily constructed (1) to lend itself to automated data entry, and (2) to include a number of carbon copies, thus reducing duplication time and costs. The "postcard," when processed, could be returned to the licensee as the license, thus reducing typing and mailing costs. The sum of the savings would be 1.5 workyears, annually.

Renewal and Transfer Division: Because of the substantial decrease in paper filed, there would be an annual savings in the Control Section of 3.5 workyears.

- Because most licensees would file short forms, there would be an additional annual savings, over that contemplated from our radio deregulation activity, of 1.25 broadcast analyst workyears.

- As the system is phased in, savings of 60 percent in file space can be achieved.

As in the case of the resource savings promised by our radio deregulation action, these resources must be reallocated to the authorization of service function to assure the timely processing of existing and expected future applications.

QUESTION: What reduction in resources do you expect to result from your radio deregulation decision?

ANSWER: When deregulation becomes effective, we expect the following annual resource savings:

3.75	attorney workyears
3.75	broadcast analyst workyears
1.0	compliance assistant workyears
8.5	total workyear savings

The specific organizational and program savings would be distributed as follows:

	BCF	C&C	Hearing	R&T
Authorization of Service	1.5			4.0
Hearing			2.0	
Enforcement		1.0		

The workyear savings will not be accrued from eight positions but from at least 35 different positions through the Bureau. These occupants of the positions have a variety of functions which will be ongoing and only a percentage of their time will be saved due to deregulation.

The four specific areas to be deregulated and their organizational impact are listed below:

I. Removal of ascertainment requirement.

Hearing Division - 2.0 workyears
Broadcast Facilities Division - 1.5 workyears
Renewal and Transfer Division - 2.5 workyears

II. Nonentertainment programming.

Renewal and Transfer Division - 1.0 workyears

III. Commercialization.

Renewal and Transfer Division - 0.5 workyears
Complaints and Compliance Division -
Slight decrease in enforcement based on dropping commercialization as an issue. Since this is a rather infrequent requirement, the decrease will not be measurable.

IV. Removal of program log requirement.

Complaints and Compliance Division - 1 workyear.

It is planned that the resources freed by our radion deregulation action will be reallocated to the authorization of service function, where the substantial increase in the number of applications already filed (and an even greater increase in filings projected in the near-term future) for both television service (particularly translator/low power) and radio service (both AM and FM) are not being processed in as timely a fashion as we would like.

QUESTION: What portion of the Broadcast Bureau's travel budget for FY 1980 was allocated to enforcement activities? How was the remainder used? How long have field investigations been postponed to conserve travel funds?

ANSWER: The Broadcast Bureau spent approximately $96,000 for travel in FY 1980. This amount was divided into two categories: program travel and administrative travel. The chart below lists the amounts and percentages of travel by the specific programs:

Program	FY 1980 Expenditure	Percent of Total
Policy and Rulemaking	$ 3,000	3%
Authorization of Services	1,100	1%
Hearing	24,000	25%
Enforcement	16,000	17%
International	42,000	44%
Total Program Travel	$86,100	90%
Administrative Travel	$ 9,900	10%
Total Travel	$96,000	100%

Some investigations were delayed briefly to allow two investigations in the same area to be conducted with one expenditure of travel dollars. However, the principle reason for a decrease in the amount of travel authorized for enforcement was due to a reallocation necessitated by the demands for international travel. This program has and will require a substantial percentage of our travel funds to meet our international commitments.

QUESTION: How many resources will be used to conduct random field audits of braodcast stations? Have additional travel funds been set aside for this?

ANSWER: The Commission proposed the concept of random site field audits in BC Docket No. 80-253. In this proceeding, the Commission revised its renewal forms for commercial and noncommercial licensees. The audits would focus on those licensees whose renewal applications indicated serious deficiencies in complying with the Commission's rules and policies or to check the accuracy of the submissions in the renewal applications. We expect that these audits would be conducted using existing travel funds.

QUESTION: What have been the cost effects of your efforts to reduce the influx of religious correspondence?

ANSWER: The efforts of the Consumer Assistance Division of the OPA to reduce the influx of correspondence concerning religious broadcasting has produced the following results:

a) A drastic reduction in the amount of incoming mail on the subject of religious broadcasting (more specifically, the correspondence refers to RM 2493, a rulemaking consumers erroneously believe alludes to the removal of religious broadcasting from the airwaves).

b) Elimination of much of the burden placed on the mail-room (in-house) by reducing the amount of time and the number of employees engaged in handling the influx of letters and petitions in support of religious broadcasting.

c) We initiated an extensive outreach effort to inform consumers, religious organizations and the press of the true nature of RM 2493 and to explain that the Commission has never considered removing religious broadcasting from the airwaves. As a result of this outreach effort there has been a significant reduction in the amount of incoming mail on this subject and a corresponding reduction in the staff resources needed to respond to these inquiries.

d) A computer system installed within the Consumer Assistance Division enables us to recognize trends and respond immediately, heading off any mail writing campaigns on single issues. We are able to immediately develop factual information pieces to respond to inquiries which arrive in volume, eliminating any backlog and undue burden on staff and other resources.

QUESTION: What is the Commission planning to do regarding prescribing accounting systems for the dominant carrier(s) and affiliated fully separated subsidiaries in order to effectuate the new regulatory scheme envisioned by Computer II? (p. 41 & 46)

ANSWER: The Computer II proceeding did not classify carriers as "dominant" and does not require unique accounting systems for such carriers. However, the Commission is proceeding with a proposed major revision to its Uniform System of Accounts for Class A and B Telephone Companies. When implemented, this accounting system will provide a body of financial data to which costing methodologies can be applied to more adequately meet the Commission's needs for ratemaking information.

The Commission does not plan to prescribe accounting systems for affiliated subsidiaries participating in unregulated enhanced services or terminal equipment markets. Their intracorporate transfer or sharing of any project or services must be done at a price that is compensatory. As part of the monitoring process, AT&T is to submit semiannual reports accounting for expenses incurred in the establishment of the Computer II subsidiary. In addition, AT&T is to separately account for expenses incurred in the provision of enhanced services. After the separate subsidiary is established, intracorporate transactions must be in auditable form and meet the reporting requirement of Section 64.702(c)(5) of the Commission's Rules and Regulations, 47 C.F.R. 64.702 (c) (5). Moreover, any contract between the subsidiary and an affiliated regulatory entity must be filed with the Commission.

QUESTION: FCC points out "much of the recent growth in the industry has occurred in entities that do not provide statistical data to FCC". (p. 42) What is FCC planning to do to improve its information sources and knowledge concerning developments in the industry?

ANSWER: The Common Carrier Bureau is reluctant to recommend to the Commission that new or existing reporting requirements be imposed on entities not now providing information to the Commission. Consequently, the Bureau is currently exploring the use of information collected by other government agencies (e.g., SEC) and trade organizations to supplement data now provided to the Commission to develop a more all-encompassing picture of telecommunications.

The Bureau is also reviewing all reporting requirements imposed on subject carriers with the objectives of (a) eliminating unnecessary reports; (b) revising remaining reports to provide information of greater relevance to the Commission's regulatory authority; and (c) reducing the frequency with which such reports are required (e.g., permitting a carrier to file a report quarterly instead of monthly). To the greatest extent possible, the Bureau will avoid imposing net additions to the reporting burdens of subject carriers and will rely instead upon outside, publicly available data to meet our information needs.

QUESTION: In view of the crucial role played by cost accounting in any deregulatory scheme relying upon use of separate subsidiaries, does the Commission believe that fully revised and approved cost accounting procedures and systems will have to be implemented before the Computer II approach is made operational (i.e., before deregulated separate subsidiaries are permitted to commence operations)? (p. 42)

ANSWER: The Commission does not believe that fully revised and approved cost accounting procedures and systems will have to be implemented before deregulated separated subsidiaries are permitted to commence operation. In the Reconsideration Order in Docket 20828 the Commission stated:

> It is imperative, however, that all parties to this proceeding understanding that the primary method to detect and police cross-subsidization and other anticompetitive behavior, once the structural safeguards for AT&T have been erected, is to have a written account of all transactions, agreements and other arrangements between the parent, affiliates and separate subsidiaries.

The Commission provide for the preparation and production of such written accounts when it adopted Section 64.702(c)(5) of the Commission's Rules and Regulations, 47 C.F.R. §64.702(c)(5). However, the separate subsidiary must adhere to generally accepted accounting practices. Fully revised and approved cost accounting procedures and systems will not have to be implemented before the Computer II approach is made operational. The separation between parent and subsidiary is a financial accounting exercise --- not a cost accounting problem -- and is already addressed by the Commission's existing Uniform System of Accounts.

QUESTION: How might the FCC handling and processing of complaints be expedited and made more effective? Does the Commission need stronger enforcement tools and stronger penalties to serve as deterrents to violations of its rules, regulations and requirements? (p. 43)

ANSWER: The Commission's rules for formal complaints do not impose strict pleading requirements. As a consequence, even after the first round of pleadings, the factual and legal contentions are often not clearly presented. Amendment of the rules to require more specificity in complaints and answers is one possible method to help expedite complaints. We are also considering a clarification or amendment to the rules to defer applications for review of interlocutory procedural rulings. Such applications for review often disrupt the normal processing of complaints. Informal "off-the-record" conferences with lawyers representing all parties to a complaint have been successful in settling complaints or narrowing the scope of issues. Such conferences will be used more in the future.

The Commission's enforcement tools and penalties are probably adequate as a deterrent to violations by relatively small carriers. However, large carriers may not be deterred by the possibility of imposition of the current maximum forfeitures, particularly if the violations result in greater revenues than the forfeitures. Imposition of damages can ameliorate this problem to some extent. However, proving the extent of damages may be a costly and time consuming process for a complainant. Shortening the time necessary to process complaints would probably go a long way toward deterring violations since the carriers would then know that violations would not be permitted to continue over a long period of time during the pendency of the complaint.

QUESTION: How is it that the Commission feels it can move forward by March 1982 with the deregulation of customer premise equipment (Docket 20828) when major questions of capital recovery and asset valuation remain unanswered? Can a Computer II Implementation Task Force of 3 people handle such a massive undertaking?

ANSWER: Acknowledging the difficulties attendant to deregulation of all customer premises equipment (CPE) by March 1, 1982, the Commission, on reconsideration of the Final Decision in Docket 20828, adopted a bifurcated dergulation scheme. Questions of asset valuation were factored into the decision to deregulate terminal equipment on a going forward basis. Only federally-tariffed CPE and CPE sold after March 1, 1982, will be provided on a non-tariffed basis until the Commission completes a separate implementation proceeding in which, among other things, questions of capital recovery and asset valuation as to embedded equipment will be addressed. (Some capital recovery questions have already been addressed in Docket 20188 relating to depreciation.)

The Commission anticipates the completion of the implementation proceeding in 1981. In the event that a decision resolving these issues did not occur prior to the end of 1981, it is possible that the Commission would choose to delay the deregulation of embedded federally-tariffed CPE. A delay in resolving these issues need not delay the data which all new CPE is to be offered on a deregulated basis. It is not the Commission's intent that a three-person task force accomplish the implementation of the Second Computer Inquiry decisions. Both the economic and accounting divisions of the Common Carrier Bureau are providing personnel on a part-time basis to work on specific projects coordinated by members of the Task Force. The Policy, Enforcement and other divisions within the Bureau will also provide personnel on a part-time basis to respond to specific project needs. In a time of limited resources, the Commission recognizes a need to prioritize it projects-implementation of the Computer II decisions is among the highest Common Carrier priorities.

QUESTION: What is the Commission doing or planning to do in order to improve its regulatory oversight of the operations of international common carriers, to examine industry structure and competitive conditions in the international area and to scrutinize and appropriately control rate of return of international carriers?

ANSWER: The Audits Branch of the Common Carrier Bureau is currently involved in ensuring that the Commission has access to useful, reliable and accurate information by monitoring and evaluating the international common carriers' accounting procedures and compliance with Commission's Rules and Regulations.

The Commission recently began removing restrictions on how customers may use the circuits they pay for, to allow companies offering international services to expand their domestic networks, giving customers the option of connecting with the record carriers directly, rather than AT&T or Western Union. New competitors have been introduced into the international data market.

The Commission recently initiated a formal rate hearing (Docket No. 80-633) into the matter of the appropriate rate of return for International Telephone & Telegraph World Communications, which is considered on the basis of available data to be the bellwether carrier of the industry.

A parallel investigation of the ITTWC operating expenses and rate base is being undertaken by the Enforcement Division.

The Commission has allowed the IRCs to expand the number of gateway cities served while at the same time requiring the IRCs to unbundle charges for terminal equipment and local access from transmission charges. The Commission is now considering whether terminal equipment provided by the IRCs should be detariffed. In addition, the IRCs have been required to interconnect with each other on demand. It is believed that this type of action will help to create a more competitive market which will require less direct Commission oversight in the long run.

QUESTION: How far behind is the development of a new system of accounts? Chairman Ferris publicly promised implementation by January 1981, but the response to the first FY 1980 objective indicates an ongoing process. Which organizational unit in the Common Carrier Bureau is responsible for the USOA revision?

ANSWER: Chairman Ferris' proposed deadline of January 1981 for full implementation of a revised USOA (a proposal he made in 1978) proved impossible to meet. As a result, we had to modify our objective. Through an analysis, we determined that a January 1984 date for implementation of the full system was reasonable, and the Chairman's testimony last year reflects this revised determination.

Initially, we had planned to implement the system on a piecemeal basis--the revenue accounts in January 1982, expense accounts in January 1983, and the plant accounts in January 1984. After further analysis, we determined that this approach would generate confusion among the carriers and that the release of a single, completely revised USOA would be the best approach. However, we have encountered additional problems which may result in postponing full implementation until January, 1985. First, Bell had proposed its Functional Accounting System as a basis for the revised USOA and the cost manual. We have contracted with an outside consultant (Mathtech) to assess the reasonableness of this proposal. We hope to release this report soon, but preliminary indications are that Bell's FAS will, unfortunately, not be suitable for our regulatory purposes.

Second, and more important, experience with FDC Method 7 has shown some aspects of that method to be unworkable. At the same time, the Computer II decision and the Joint Board proceedings have revealed an increased need for usage-based (relative use) cost information. As a result, we reoriented our work on a revised USOA to attune the system more closely to separations-based cost accounting.

As mentioned previously, we do not expect these difficulties to postpone full implementation of a revised USOA for more than a year.

In the January 1980 Commission's response to the GAO report, "Outlook Dim For Revised Accounting System Needed For Changing Telephone Industry", dated November 13, 1979, the Deputy Bureau Chief (Policy) was designated as the "Responsible Official" for USOA. Under the Deputy Chief, the USOA task is being undertaken as a joint project by the Economics and Accounting and Audits Divisions. In addition, the Tariff, Domestic Facilities, Enforcement, and Policy and Program Planning Divisions are contributing substantially to the proposed revisions.

QUESTION: Given the basic work regarding USOA that remains to be completed and is targeted for completion in FY 1982, what conclusions can we draw regarding the regulatory value of the accounting data the Commission has been relying on up until the present, as well as its ability to effectively audit carrier financial and operating practices, procedures and records? (p. 50)

ANSWER: Present accounting data is and will continue to be necessary and viable in considering total company operations. In addition, existing accounting data continues to be necessary and useful for historical and trending purposes. Moreover, this corporate accounting data has been used by the Commission in the formulation of regulatory policies affecting the evolving competitive communications environment.

The Commission's ability to effectively audit carrier financial operating practices, procedures and records has long been recognized as inadequate. In the traditional sense, it is physically impossible to audit financial and operating practices of a $133 billion industry with fifteen professional accountants. The Commision's approach has been one of selecting areas of the highest priority and performing selective investigations which might affect carriers on a system-wide basis.

QUESTION: What is the ongoing work of the New York Field Office associated with the Common Carrier Bureau? How many people are involved and how is their work interwoven into ongoing Commission proceedings?

ANSWER: The ongoing work of the New York Field Office involves selective compliance audits of various common carriers, special projects and various requests from other units of the Bureau. It is involved in such things as: Division of Revenue Studies; Separations/Settlement Studies; Cost Allocations Manual for IRC's; Review of Annual Reports of common carriers; Various Chart of Accounts activities, e.g., Marketing Expenses, Central Office Equipment; and Review of Continuing Property Records.

The New York Field Office currently has 8 professionals involved in Common Carrier Bureau activities.

The New York Field Office is asked to perform special reviews, provide data (financial), and perform research work for ongoing Commission proceedings. The Field Office is instructed from Commission Headquarters (D.C.) as to what is required for the proceedings.

QUESTION: How do you determine what audit work will be done by the limited FCC field audit staff? What percent of field audit work is self-initiated by field staff and what percent is undertaken as a result of instructions from Washington headquarters? What criteria are supplied to field staff to guide them in selection of self-initiated work? (p. 47, 50)

ANSWER: The need for audit facilities is determined by issues raised in docketed proceedings, questions raised as a result of prior audits, or in response to questions raised by other divisions within the bureau. The determination of what audit work that will be performed by the field audit staff is made by the nature of the audit, location of the audit and expertise necessary to complete the audit.

In FY 1980, the Commission or bureau chief directed over 50% of the field audit work. Other divisions within the bureau requested 25%, and 25% was self-initiated. Washington approval is required for field offices to commit resources or redirect specific audit efforts. Coordination with other organizations within the bureau is stressed, and the field staff is furnished applicable Commission Orders, Decisions, Memorandum and Opinions, Rulemakings and Inquiries on a continual basis.

QUESTION: A lot of audit attention is given to the IRC's, what auditing is done of a much larger and more important entity, AT&T? (p. 50)

ANSWER: Auditing activities performed on AT&T over the past several years have focused on elements affecting such areas as: (1) AT&T/WECO Rate Base; (2) Cost Sharing of Centralized message data systems by AT&T/Long Lines; (3) AT&T's marketing expenses; (4) New York Telephone Detailed Continuing Property Records; (5) Separations Related Studies; (6) Long Lines' Detailed Continuing Property Records; (7) Bell System's

Interstate Settlement Information System; (8) Investment in Right-to-use fee of computer software; and (9) Miscellaneous Physical Property - New York Telephone.

Limited staff resources preclude simultaneously strong emphasis being placed on both AT&T and IRC's. Thus, for any given year, the Bureau's needs and priorities determine which industry will receive stronger emphasis. For example, in 1977, field activity was almost exclusively aimed at the IRC's. In 1979, audit activities focused primarily on AT&T and Comsat. For Fiscal Year 1981, it is anticipated that the IRC's will receive greater emphasis, at least for the first half of the year.

QUESTION: We understand that your Gettysburg staff is currently located in two different buildings. In addition, some Licensing Division functions are still in Washington. Since you have been able to achieve speed-of-service gains without any actual consolidation and while new staff are being trained, doesn't this belie your contention that similar gains were unachievable without moving to Gettysburg? What additional speed-of-service improvements are expected once all staff are colocated in single building?

ANSWER: The Licensing Division staff is currently located in two buildings in Gettysburg and one in Washington. Of the 155 full-time permanent (FTP) positions assigned to the Licensing Division in Gettysburg, 121 are currently filled. There are 28 positions filled in Washington which are assigned to the priority placement program. These figures contrast to the 64 positions in Gettysburg and 101 positions in Washington at the time of the decision to consolidate.

All Licensing Division functions are already consolidated in Gettysburg except for portions of Microwave (Operational Fixed) and 800 MHz, and all of 470-512 MHz. In terms of application receipts, this means that 99.4% of the workload is now being processed in Gettysburg. The remaining functions have not been transferred to Gettysburg because of a lack of space. This will continue until a new facility is ready.

Even though we are not yet in a single facility in Gettysburg, most of the consolidation has already been accomplished. All the functions already in Gettysburg and each function as it was relocated, were reorganized and reassessed on the basis of a consolidated Licensing Division. Thus, the support functions such as mail opening, filing, consumer assistance, typing, etc., are being performed on a consolidated basis. While it is true that the new facility may have some impact on efficiency, its greatest impact will be on employee morale by eliminating crowded and unsatisfactory conditions. Our Gettysburg employees have been doing an outstanding job in the face of terrible working conditions.

The decision to consolidate the Licensing Division in Gettysburg was a two-part process: First, the decision to consolidate because of the efficiencies to be gained thereby; and second, to consolidate in Gettysburg because of the less expensive space costs, lower turnover, and less impact on existing staff. Locating in Gettysburg was secondary to the decision to consolidate.

QUESTION: Of those Licensing Division employees who chose not to relocate to Gettysburg, how many are still with the Commission? Please furnish us a list indicating their former and present positions and grade levels.

ANSWER: Eighty-nine Licensing Division employees have not relocated to Gettysburg. Of these, 55 are still with the Commission.

The attached list specifies those employees who did not relocate but remained with the FCC. It also indicates their former and present position and grade.

LICENSING DIVISION EMPLOYEES WHO DID NOT RELOCATE
BUT STAYED WITH THE COMMISSION

	PREVIOUS		PRESENT	
	TITLE	GRADE	TITLE	GRADE
1.	Special Assistant	14	Chief, Technical Section	14
2.	Chief, Systems & Proc. Group	14	Special Assistant	15
3.	Electronics Engineer	13	Electronics Engineer	13
4.	Communications Assistant	8	Communications Assistant	8
5.	Contact Representative	7	Program Analyst	11
6.	Clerk-Typist	4	Clerk-Typist	4
7.	Clerk-Typist	4	Secretary	5
8.	Chief, Land Mobile Branch	14	Electronics Engineer	14
9.	Assistant Chief, LM Branch	13	Electronics Engineer	13
10.	Clerk-Typist	2	Clerk-Typist	4
11.	Clerk-Typist	2	Clerk-Typist	3
12.	Electronics Engineer	13	Electronics Engineer	14
13.	Electronics Engineer	13	Electronics Engineer	13
14.	Electronics Engineer	13	Electronics Engineer	13
15.	Applications Examiner	7	Supv. Applications Examiner	7
16.	Applications Examiner	4	Applications Examiner	5
17.	Applications Examiner	4	Public Reference Clerk	5
18.	Applications Examiner	4	Applications Examiner	5
19.	Applications Examiner	4	Applications Examiner	5
20.	Contact Representative	6	Contact Representative	6
21.	Control Clerk	4	Applications Examiner	5
22.	Clerk-Typist	3	Applications Examiner	5
23.	Applications Clerk	2	Clerk-Typist	4
24.	Applications Clerk	2	Data Transcriber	4
25.	Applications Examiner	7	Lead Applications Examiner	7
26.	Applications Examiner	6	Applications Examiner	6
27.	Applications Examiner	6	Applications Examiner	6
28.	Applications Examiner	5	Procurement Agent	5
29.	Applications Examiner	6	Communications Technician	7
30.	Applications Examiner	5	Applications Examiner	6
31.	Applications Examiner	4	Applications Examiner	6
32.	Applications Examiner	4	Applications Examiner	5
33.	Applications Examiner	5	Broadcast Analyst	7
34.	Chief, Advanced System Unit	12	Program Analyst	12

LICENSING DIVISION EMPLOYEES WHO DID NOT RELOCATE

BUT STAYED WITH THE COMMISSION

PREVIOUS		PRESENT	
TITLE	GRADE	TITLE	GRADE
35. Communications Specialist	9	Communications Specialist	9
36. Regulatory Assistant	7	Communications Technician	8
37. Applications Examiner	7	Lead Applications Examiner	7
38. Applications Examiner	6	Broadcast Analyst	9
39. Applications Examiner	6	Applications Examiner	6
40. Applications Examiner	6	Communications Technician	7
41. Applications Examiner	6	Applications Examiner	6
42. Chief, Microwave Branch	14	Chief, Microwave Branch	14
43. Electronics Engineer	13	Electronics Engineer	13
44. Electronics Engineer	13	Electronics Engineer	13
45. Applications Examiner	6	Applications Examiner	6
46. Applications Examiner	5	Computer Programmer	5
47. Chief, A & M Branch	14	RTCM Executive Secretary	14
48. Electronics Engineer	13	Electronics Engineer	13
49. Communications Specialist	13	Communications Specialist	13
50. Communications Assistant	6	Secretary	6
51. Applications Examiner	4	Applications Examiner	6
52. Applications Examiner	6	Applications Examiner	6
53. Applications Examiner	6	Contact Representative	7
54. Applications Examiner	7	Applications Examiner	6
55. Supv. Applications Examiner	9	Broadcast Analyst	9

QUESTION: When will the leased space be available in Gettysburg, Pennsylvania? What was the cost to find this space? Where are the employees located now? At what costs?

ANSWER: (a) The new space should be available by June, FY 1981. This date is derived from projected construction schedules and may change if weather or supplier delivery schedules cause delays.

(b) A total of 354 calendar days were expended in developing the solicitation package, evaluation of offerors and review of the lease by our General Counsel. Also included in this time is delay in information exchange through the mail, delays in response by bidders and time lost in numerous discissions between the contracting officer and bidders that cannot be accurately measured against specified aspects of the time used to find the Gettysburg space. While no detailed accounting of manhours was maintained to tract staff costs for finding the Gettysburg space, the following information represents advertising costs, manhours cost and consulting costs incurred.

I. Advertising Costs

The advertisement in the Gettysburg newspaper cost $32.00.

II. Staff and Consulting Costs

Labor Category	Mandays	Cost Estimates
Senior Managers (4/GS15)	15	$ 10,276.80
Contracting Officer (1/GS15)	25	4,282.00
Tech Eval Team:		
FCC Staff 1/GS15-1/GS13-1/GS14	20	8,861.00
General Counsel (1/GS15)	15	2,569.20
Staff Support (1/GS5)	10	294.50
		$ 26,283.50

III. Consultant Time

Computer Science Corporation (Tech Eval Team and layouts) - $20,000

Studley Realtors - $33,000

(c) Positions are located as follows:

Location	Total
York Street Gettysburg, Pa.	90
Post Office Building Gettysburg. Pa.	45
2025 M Street Washington, D.C.	33
	168

(d)

Post Office Building Gettysburg, Pa.	1,210 sq ft @ $5.66 per sq ft	$ 6,848.00
York Street Building Gettysburg, Pa.	9,824 sp ft @ $6.51 per sq ft	$ 61,390.00
2025 M Street, N.W. Washington, D.C.	6,110 sq ft @ $14.31 per sq ft	$ 87,434.00
		$155,672.00

QUESTION: What is the projected total cost of the move to Gettysburg now, given the fact that another move must occur to the new office space and the total square footage to be acquired is about 4,000 feet greater than requirements.

ANSWER: The projected total cost for the move to the new space in Gettysburg is $8,100.00. Standard GSA space allocation guidelines were used to calculate the total number of square feet required to consolidate 175 persons to be relocated from offices in Washington, D.C., and Gettysburg at the York Street and Post Office buildings. These calculations also included special space requirements for data processing equipment, meeting rooms, public reference rooms and health facilities.

QUESTION: Please elaborate on your plans to continue studies of the economic relationships between cable and broadcast services. What will be studied, what products produced and what uses made of them?

QUESTION: What is the difference between this objective and that of continuing policy and research efforts relating to changes in the regulatory relationships between Cable Television and other telecommunications services?

ANSWER: In August of last year, in a decision now in court, the Commission voted to eliminate those of its rules which limited the carriage of distant signals by cable systems and which restricted the carriage of certain syndicated programs from distant stations. This decision concluded a four year study of the rules in question which, it was believed, proved that the elimination of these rules would not damage the service received by the public from over-the-air television broadcast stations.

The economic and statistical evidence in this proceeding was developed by a staff which included 5 outside economists hired as consultants to the Commission and 3 or 4 staff economists as well as several Commission lawyers. Although the economic experts were confident of their conclusions, several unknowns were inevitably involved such as the speed of growth of the cable industry and of new program sources. Given the very strong arguments from the broadcast industry that these changes in the rules would have severe adverse consequences for the public, we would like, if the changes finally go into effect, to compare actual results with those predicted. The results of these further studies should be useful in telling the Commission whether to proceed with further deregulation in other areas or whether to retrace its steps.

We also anticipate, whether the rules are retained or eliminated, that we will continue to receive hardship pleas and petitions for special relief from either cable systems or television broadcasters. Some overall study of the issues of impact will be needed to instruct us on where to go with these special relief proceedings.

Other proceedings involving broadcast-cable relationships, such as pending requests for changes in the network non-duplication and mandatory signal carriage rules, ought also be subject to detailed economic analysis. The degree to which such studies can be undertaken, however, is problematical either with the existing staff or with the additional reductions. At this point only one statistician remains of the original team of economists in the Cable Television Bureau working on this subject. The outside consultants and other staff economists have either had their contracts terminated or have moved on to other higher priority matters in the Commission's Common Carrier Bureau or elsewhere.

The other studies referenced, concerning cable and other telecommunications services are of several types. First, there are ongoing studies relating to rules limiting ownership of cable systems by the national television networks, local stations, and by telephone companies, and rules have been suggested relating to cable ownership by newspapers, radio stations, and foreign interests. In a number of these areas the Commission has promised to keep track of developments as they occur, (foreign ownership), and in other areas it has been suggested that existing rules should be eliminated (network, telephone, or local station ownership) or that new rules should be adopted (multiple ownership or size limitations). Additional study is needed to provide some basis for moving forward on these issues.

Other types of relationships besides ownership relate cable television to other telecommunications services as well and will unavoidably require decisions by the Commission. For example, changes in the technical standards or rules governing broadcast television transmissions, including the authorization of teletext service by television stations, would require a review of the rules governing cable television carriage of these services. The increasing carriage of newspapers or other print like materials by cable systems raises questions about the Commission's program content control rules and their constitutionality. And the development of competition between cable systems and telephone companies for certain types of communications services is also likely to raise questions of whether existing rules should be eliminated or new ones adopted.

QUESTION: *To what extent are Field Operations Bureau personnel used in cable television enforcement activities? (p. 134, 135)*

ANSWER: The Cable Television Bureau's rule enforcement program is administered by its Compliance Division. The Compliance Division is composed of an Enforcement Branch and a Complaints and Information Branch. The Enforcement Branch is staffed by two attroneys, two paraprofessionals and a secretary. Its work is principally legal in nature. Purusant to Section 502(b) of the Communications Act, as amended in 1978, and implementing Section 0.288(m) of the Commission's Rules, the staff in this Branch institutes and prosecutes forfeiture proceedings where violations of the Commission's Rules have occurred. Forfeiture proceedings now constitute the Bureau's principal mode of enforcement. Pursuant Section 0.288(k) of the Rules, the Branch also has authority to initiate hearings through orders to show cause.

The activities of the Complaints and Information Branch complement the activities of the Enforcement Branch by fostering public awareness of the requirements of the Commission's Rules as well as by referring consumer complaints that appear to involve rule violations to the Enforcement Branch for further review and action. In 1980 the Complaints and Information Branch responded to over 4,000 complaints and requests for information. In many cases the Branch can correct problems by contacting and working with the system operator. In the Rules, however, the problem is referred to either the Enforcement Branch or to the Field Operations Bureau for further action as appropriate.

Field Operations Bureau staff support the Compliance Division's enforcement program by making on-site inspections in situations where field representation is necessary to clarify or resolve a particular problem. This is the same type of support activity FOB performs for the other operating Bureaus. To date the preponderance of FOB's support activities for the Cable Bureau have involved complaints regarding noncompliance with the Commission's technical standards and resulting degradation of picture quality and interference to non-subscribers' reception. Additionally, FOB responds on its own to such complaints when they are lodged at FOB's local offices. The two Bureaus coordinate and advise each other of their enforcement activities.

In recent months FOB has commenced a program of inspecting a number of cable television systems in conjunction with the Cable Television Bureau's aeronautical frequency clearance program. The purpose of these inspections is to spot check these systems' compliance with the notification requirements of Section 76.610(b) of the Rules concerning cable use of aeronautical frequencies and thereby encourage all systems who may not be operating in compliance with the rules to notify the Cable Television Bureau that they are using aeronautical frequencies. In that way the Bureau can check the frequency use for conflicts and order temporary termination where conflicts exist, thereby insuring the integrity of air traffic safety. This program is the single most important Cable Television Bureau enforcement program now in effect. Pursuant to this program, FOB plans to check 200 cable systems, about 5 percent of the systems in the country, by June 1981 and another 200 by the end of the year. FOB is also expected to examine a considerably smaller number of systems for possible signal leakage.

QUESTION: In light of the Commission's many efforts to deregulate portions of the /communications/ industry, why has it taken the Commission so long to act on the Westinghouse-Teleprompter merger petition?

ANSWER: In merging with Westinghouse, Teleprompter Corporation will pass control of the various radio licenses it now holds - principally consisting of Cable Television Relay Service (CARS) licenses - to Westinghouse. The Commission is specifically mandated by Section 310(d) of the Communications Act of 1934, as amended, to examine and approve all applications for transfer of control of radio licenses in order to assure that the proposed transfer(s) will serve the public interest, convenience, and necessity. While it is true that the Commission has acted to significantly reduce the extent of federal regulation of cable television by amending its cable television rules, the Commission is powerless to amend the provisions of the Communications Act of 1934.

QUESTION: The delay in the Westinghouse-Teleprompter matter seems particularly unreasonable in view of the Commission's limited jurisdiction in this area. When does the Commission plan to act on this petition?

ANSWER: The Westinghouse-Teleprompter applications for transfer of control have been opposed by a number of parties. Therefore, in its present posture this proceeding is a restricted adjudicatory proceeding as defined at Section 1.1203(c) of the Commission's Rules and Regulations, and consequently the Commission's ability to receive communications and make comments on the issues are circumscribed by the Commission's rules on ex parte presentations, 47 C.F.R. §1.1201 et seq. Within these limitations, however, it is appropriate to note that the opposing parties have raised numerous issues that bear materially on the question of whether the proposed transfers would serve the public interest, convenience, and necessity, and that are not rendered moot by the Commission's recent deregulatory actions. Consistent with the mandate of Section 310(d) of the Communications Act the Commission will give fair and full consideration to these issues. We anticipate that an order in this proceeding will be forthcoming within the next ninety days.

With particular reference to the length of time this proceeding has been pending, a comparison with similar merger proceedings suggests its pendency is not disproportionate, as the following tabulation illustrates:

Principals	Date(s) filed	Date opinion issued
Teleprompter Corporation-H&B American Corporation	October 6, 1969	August 14, 1970
Athena Communications Corporation-Tele-Communication, Inc.	November 30, 1973	June 20, 1974
Time, Inc.-American Television Communications Corporation	Various dates, April 1978	November 13, 1978
Cox Broadcasting Corporation-General Electric Company	Various dates May-June, 1979	April 29, 1980

QUESTION: Does FCC have the authority to vacate the 2000L Street relocation without penalty prior to the expiration of the lease, or will FCC have to continue to pay the $391,000 in annual rent?

ANSWER: We would expect that in the event that the FCC determined it to be in the government's best interest to vacate the 2000L Street location prior to August 31, 1985, the expiration date of the lease, the landlord would assume our lease without penalty to the government. We believe this to be a reasonable assumption as under the terms of our lease we pay $14 per square foot, while the going market rate in this area is well over $20.00 per square foot. If we vacated the space prior to the date cited above, the landlord could re-lease the space to another tenant at a substantially higher price, thereby actually benefiting from our action.

QUESTION: What effect will recent budget reductions have on FCC's planned move to Rosslyn? In other words, will FCC have sufficient money to effect the move as planned, or will reductions in personnel also reduce its space requirements?

ANSWER: At this point in time, the FCC has no plans to move to Rosslyn, VA. The feasibility of such a move, from a budgetary perspective, will necessarily be examined when and if such a move is contemplated.

QUESTION: How was the temporary office space in the buildings surrounding FCC;s headquarters found? By FCC personnel? By Contract? What was cost of consultant fees?

ANSWER: In the late summer of 1979, when it was apparent that the FCC would be granted independent leasing authority, we received an unsolicited proposal from Julien J. Studley, Inc. a prominent D.C. brokerage and consulting firm, to provide us real estate consulting services. As our internal staff had little experience or expertise in acquiring office space we believed it most prudent and cost effective to retain the services of a consultant. Given that the daily rates charged by J. J. Studley, Inc.

were comparable, and in the final analysis actually lower than those charged by many other area realty consultants, we proceeded to issue a purchase order, and later a contract with Studley for a variety of consulting services associated with space acquisition. Therefore, it was with the assistance of Julien J. Studley, Inc. that the FCC finalized leases for three parcels of space in the immediate vicinity of our Washington, D.C. Headquarters facility:

6000 sq ft of space at 2033 "M" St., N.W.;

8000 sq ft of space at 2555 "M" St., N.W.; and

27000 sq ft of space at 2000 "L" St., N.W.

Examples of primary services that were rendered are in-depth assessments and analyses of available office space and substantial assistance in preparing solicitation packages and finalizing leases. The following represents a breakout by space leased of the fees we actually paid J.J. Studley for services rendered:

2033 "M" St., N.W.:	$1500 (rounded figure)
2555 "M" St., N.W.:	$6700
2000 "L" St., N.W.:	$20,000
	$28,200

QUESTION: What are leasing activities costing FCC in yearly rent? Administrative costs?

ANSWER: The annual rental on FCC negotiated leases is as follows:

LOCATION	AMOUNT OF SPACE	LEASE EXP DATE	ANNUAL RENT	COST FY 80	COST FY 81
2033 "M" St., NW	6,162 sq ft	December 1980	----	$41,574	----
2555 "M" St., NW	7,774 sq ft	June 1981	$132,169	$132,169	$132,169
2000 "L" St., NW (2nd Floor)	21,795 sq ft	August 1985	$305,130	---	$305,130
2000 "L" St., NW (8th Floor)	5,063 sq ft	August 1985	$86,156	---	$86,156
Gettysburg, PA	29,345 sq ft	1990	$249,139	---	Dependent upon Move-In Date

Administrative costs which we have interpreted to mean compensation paid to FCC staff members for their work directly related to our office space leasing activities, was approximately $120,000 for the time period January 1980 - March 1981.

QUESTION: Since FCC has been given its own leasing authority how many additional persons has this required to handle this activity? How many were new hires and how many were on board?

ANSWER: While we have not hired any new people to handle the responsibilities associated with our leasing activities, we have reallocated on-board personnel from within the Executive Director's office to the Space Management Team as events necessitated. To date, three individuals have been transferred from lower priority programs to our Operations Support Division, Space Management Team.

QUESTION: *Did Studley recommend or suggest that FCC consolidate its operations at the Rosslyn location?*

ANSWER: Yes

QUESTION: *Did Studley evaluate and recommend alternatives to the Rosslyn site?*

ANSWER: Yes. At our request, Julien J. Studley Company completed an in-depth analysis of consolidated facility options in the D.C. metropolitan area. As a result of this analysis, the Studley Company discussed these primary parcels of suitable space with us; one building on Vermont Avenue, the Federal Center Plaza in downtown D.C. and the Twin Towers Complex in Rosslyn, VA.

QUESTION: *Did FCC rely solely on Studley's services or did it contact other realty firms to identify other sites?*

ANSWER: We relied solely on the services of Julien J. Studley, Inc.

QUESTION: *Was it in the best interest of the Government to have Studley act as a tenant broker rather than as a paid consultant to FCC?*

ANSWER: Yes, we believe it was in the best interest of the Government to have the Julien J. Studley, Inc. representative serve as a tenant broker for the FCC, rather than as a paid consultant, for the consolidation project.

QUESTION: *Is FCC relying on Studley for leasing expertise?*

ANSWER: We are no longer relying on Julien J. Studley, Inc. for leasing expertise.

QUESTION: *Why did FCC agree to a provision for annual escalation of base rent in addition to escalation for real estate taxes and operating expenses?*

ANSWER: Given current D.C. space economics, it is now the prevailing market practice in Washington, D.C. to include such a provision in leases for space. This provision was present in all lease proposals that we reviewed.

QUESTION: *What impact does FCC expect the annual base-rent escalation factor will have on budgetary outlays over the entire 20-year lease term?*

ANSWER: As we have executed no lease with this provision as of this date, we are unable to estimate the potential impact of such a provision on our budget.

QUESTION: By agreeing to an escalation factor in the base rent, does this set a precedent whereby other landlords will insist that all future government leases contain such a provision? In other words, a landlord may refuse to lease to GSA if he can strike a better deal with FCC and have his base rent increased each year.

ANSWER: Given that we would have consummated only one government lease, in an area (D.C. Metropolitan area) where the government is unquestionably the major lessee and therefore, wields considerable influence with lessors, we find no rationale to support the argument that every landlord could insist that all future government leases contain such a provision. In other words, we see no reason why the terms of one government lease for space in Washington, D.C. would impact all future government leases for space.

LEGAL SERVICES CORPORATION

STATEMENT OF DAN J. BRADLEY, PRESIDENT

BUDGET REQUEST

Senator WEICKER. Our next request is that of the Legal Services Corporation. The amount requested is $399,637,000, an increase of $44,600,000 over the 1982 base. President Carter recommended an appropriation of $347,000,000. President Reagan has recommended that the Corporation receive no appropriation for fiscal year 1982. The requested appropriation will allow continuation of existing representation of the poor in civil matters by over 300 locally controlled programs. The increase requested will allow a substantial increase in legal services provided through private lawyer involvement and will improve the support assistance provided to high quality representation throughout the country.

Appearing on behalf of this request is Dan Bradley, President of the Legal Services Corporation.

Dan, it is nice to have you back here.

Mr. BRADLEY. Thank you very much, Mr. Chairman. Mr. Rudman, I welcome you to the committee. This is my third appearance before this particular committee. I regret to say it will probably be my last.

Senator WEICKER. I don't know about that.

Mr. BRADLEY. I guess I can hope, but I also have to be realistic, Mr. Chairman. I also apologize, I am recovering from a bad case of laryngitis. I brought all of my medication with me today. Those who know me well know that even laryngitis doesn't stop me from talking ad infinitum, sometimes ad nauseam.

What I would like to do, Mr. Chairman, if I could, is very informally discuss with the committee the state of the Legal Services Corporation and attempt to answer any questions that you and Mr. Rudman might have.

PREPARED STATEMENT

I have submitted for the record detailed testimony supporting the Corporation's request for 1982 appropriation. If I could, Mr. Chairman, I would like to at least give to the committee and leave it to your judgment whether or not you want to make it a part of the record.

Senator WEICKER. I was going to say, we will be glad to make this a part of the record. I also have your statement. I hope you read your statement. It is very strong.

[The statement follows:]

Statement of Dan J. Bradley

It is a pleasure to appear before you today to discuss the Corporation's budget for Fiscal Year 1982. The members of this Subcommittee have provided the Corporation strong support and constructive criticism. Both have been vital to the strength and the stability of the legal services program.

I appear before you today in the context of a fundamental reexamination of the question, whether Congress should continue to support civil legal assistance for the poor. You, Mr. Chairman, by your cosponsorship of a bill to reauthorize the program, have made clear your own commitment to legal services. The ranking member of the Subcommittee, Mr. Hollings, has played the pivotal role in maintaining budget authority for legal services during the very difficult deliberations of the Senate Budget Committee. Other members of the Subcommittee have made equally clear their own interest in preserving legal services. We are deeply grateful for your leadership.

Last December, the Board of Directors of the Corporation developed a budget of $399.6 million for Fiscal Year 1982. Pursuant to our statutory responsibilities, we submitted that request to you in January. That budget is responsible, reasonable, and fully justifiable in terms of the maintenance of essential activities of the Corporation and the 323 legal services programs we fund.

In his own budget submissions to Congress in January, President Carter indicated his support for legal services and recommended a more modest increase in funding -- $347 million. In March, President Reagan recommended the elimination of all funds for legal services for the poor.

I am a realist. I do not come before you today to argue for the budget request we submitted in January. Everyone in legal services knows that this is not a time when Congress will consider budget increases. The questions you are being forced to ask, I know, are whether there should be any legal services program at all, and if so, what the size of the budget cuts should be. My statement is our response to those questions.

I. Why Legal Services

This Subcommittee has repeatedly recognized the unique nature of legal services and the values it promotes. In the light of the President's proposals, however, it is important to restate them here.

Legal services has its basis in the principles of fair play and equality before the law. Those values are fundamental to our constitutional form of government. We have chosen a system for the peaceful resolution of disputes through an adversarial judicial process. If this constitutional interest in fairness and due process is to have meaning, then individuals must have access to our system of justice, regardless of their ability to pay for legal help. The need for effective counsel is particularly critical for the poor, because fundamental personal interests are most often at stake -- loss of custody of their children, eviction from their homes, termination of subsistence income, repossession of essential personal property, denial of medical assistance, commitment to institutions and the loss of personal liberty.

Legal services provides the "safety net" that enables the poor to gain access to the goods, services, and legal remedies that this society, through its elected officials, has determined should be available. It makes little difference what the law provides in terms of benefits or protections for the poor, unless the intended beneficiaries have the capacity to enforce that law -- a capacity that legal services provides.

Legal services is essential in a society that values respect for the law. The availability of legal assistance has done much to demonstrate to the poor that the law need not be viewed as an enemy, that the legal system can be made to work for them just as it works for powerful interests in this country.

Legal services is not just one of many social services that _might_ be provided with public funds. It is an _essential_ service that distinguishes our society from others. It is a hallmark of our democracy. It is a service which assures that the rights, the benefits, the protections and the obligations provided by our laws are enforced effectively and equally among all persons in this country.

This is not a Democrats' program. It is not a Republicans' program. It has been supported by the last four Presidents of the United States and by every President of the American Bar Association since 1965 when Mr. Justice Lewis Powell led the effort that resulted in the creation of Legal Services within the Office of Economic Opportunity. Thoughtful liberals and conservatives have come together in the Congress and throughout the country in support of the fundamental principle of equal access to justice -- a principle expressed in the preamble to the Legal Services Corporation Act, a principle given meaning by your action over the past five years to bring minimum access to legal services to the poor in every part of this country.

II. The Legal Services Program Today

In 1975, the Corporation and this Subcommittee assumed jurisdiction over a languishing legal services program. We inherited a $71.5 million operation, providing services in a relative handful of jurisdictions concentrated for the most part in urban centers on the East and West Coasts. Today, we are managing a vital $321 million program providing a minimum level of high quality legal assistance to poor people in every part of this country. Access to justice -- a meaningless phrase to most poor people in 1975 -- is now within the realm of possibility.

The minimum access plan was one that the Corporation, the Congress, and the legal community undertook together. It was done cautiously, thoughtfully, and openly. We cannot just casually throw it aside.

In 1975, there were 3,400 legal services lawyers and 1,100 paralegals providing civil legal assistance to the poor. Today there are over 6,200 attorneys and 2,800 paralegals in this program. That growth is dramatic and the impact on the daily lives of the poor has been tremendous.

- In Western Arkansas, an office opened in Russellville this past September. Within two months, over 100 people came to the legal services attorney there for help. An elderly woman in Yell County got help with an unfair eviction. A Pope County welfare recipient got help in obtaining support from her child's father. A young couple in Johnson County got back a car that was wrongfully repossessed.

- Residents of rural counties in Iowa who have been trying for six years to get action on their claims for social security disability finally have lawyers who cut through the red tape to get the benefits to which they were entitled. In Cerro Gordo County, a poor woman confined to a county home for 18 years as a result of a request for emergency subsistence has been released.

These stories can be repeated in every community where legal services has opened its doors in the past five years. I can think of nothing more cruel, more disillusioning to poor people throughout the country than to slam those doors -- to cut off their access to justice, just as it has finally been achieved.

III. The Role of Private Attorneys

Some have argued that the end of federal money for legal services will not mean the end of legal services for the poor -- that private attorneys, working *pro bono*, can provide an adequate replacement. That will not -- it cannot -- happen. There is just too much work to be done.

Last year, legal services lawyers and paralegals handled over 1.5 million legal matters for eligible clients. One and one half million cases -- no one can realistically expect that voluntary contributions of private attorneys can provide that volume of service.

Pro bono contributions have always been a vital, integral part of the legal services delivery system. The lawyers and paralegals supported with Corporation funds meet, at best, only 15 to 20 percent of the actual need for legal services among the poor. The *pro bono* contributions of private attorneys have been an increasingly important supplement, helping to narrow somewhat the gap between resources and need.

It is absolutely essential to increase that voluntary effort -- not to replace but to add to the resources available through

Corporation funds. For the past two years, the Corporation and the American Bar Association, together with legal services programs and state and local bar associations throughout the country, have been engaged in a major -- and highly successful -- campaign to develop and strengthen pro bono activities.

Even in the best of times, there can never be enough public money to pay for all of the legal help that poor people need. There can never be enough voluntary legal services to meet the need. Since this Corporation was established in 1975, it has always been a joint venture of the federal government and the private bar. It must stay that way. Neither partner can give up its share of the responsibility.

In the budget request we submitted in January, we proposed an additional $30 million to help increase private attorney participation in the delivery of legal services -- paid and pro bono. That proposal follows the results and recommendations of the Congressionally-required Delivery Systems Study the Corporation completed last year. It builds on the new interest among private lawyers, the organized bar, and our own programs to expand the number of private practitioners directly involved in the legal services program. We wanted to take advantage of that interest to increase the amount of service available to the poor. Unfortunately, those are plans that will probably have to be deferred.

IV. Appropriation Levels for 1982

The members of this Subcommittee understand, I know, that there is no way to make any significant cut in the legal services budget without cutting directly into service to clients.

Even if we can convince you to appropriate for 1982 the same $321 million the Corporation received this year, service to clients would be eroded. That erosion is already taking place, as programs continue to lose ground to inflation.

- In Vermont, the statewide program had 23 attorneys in 1977. Now they have 17. The program is implementing a hiring freeze and limiting salary increases for remaining attorneys to 3 or 4 percent.

- Eight years ago, Legal Aid of Alameda County in California employed 54 attorneys in 12 offices. Today, that same program has 30 attorneys in 7 offices. Those lawyers still with the program are earning salaries that average $4,000 below comparable positions with public agencies in the area.

- The Legal Aid Society of Metropolitan Denver already projects a budget deficit for 1981 of $126,000. At least four legal workers -- lawyers and paralegals -- will be laid off this year. At current funding levels, the program will be $310,000 in the red by 1982 and nearly $500,000 in debt by 1983 unless services to clients are severely curtailed. Additional staff will be let go and the program consolidated to central offices that will provide little direct access to poor people outside the inner city.

The impact of these office closings and staff reductions is particularly harsh when you consider that, even at current operating levels, legal services programs are now able to help only a fraction of the total number of eligible clients with serious legal problems. Individual programs deal with this gap between resources and needs, according to community judgments about priorities. Over and over, however, the story is one of legal problems left unattended.

- New Haven Legal Assistance provided quality legal assistance to 2,000 poor people in 1980. They turned away 8,000 eligible clients because they did not have the attorneys or paralegals to help them.

- In Austin, Central Texas Legal Services referred 625 eligible clients to the local Bar Association, because the program could not take any more cases. There is a three month waiting list for an appointment with the domestic unit, even though the program limits domestic cases to those where children are involved.

- In San Antonio, Bexar County Legal Aid has limited eligibility to 80 percent of the maximum allowable income established by Corporation regulation. Even so, 48 percent of all applicants for service are turned away. For those clients who are accepted, appointments to see a lawyer are set up as much as 60 days in the future.
- In Wilmington, Delaware, the Legal Aid Society closed intake on family law matters for four months this past year so that the backlog of cases could be handled.

Programs faced with impossible choices are making impressive efforts to maintain service. Programs within a state are working together closely to share knowledge and experience, to minimize duplication of effort on common legal problems. Technology is being used for word processing, financial management and legal research, to the extent resources are available to put applicable systems in place. New efforts are being made to develop better bar referral systems and organized pro bono efforts to serve clients. New approaches are being developed to reach clients in remote isolated areas.

The painful reality is, however, that legal services programs already operate at the margin. There is very little that can be done to meet rising costs, short of reducing available service. Salaries already are at an absolute minimum in most programs -- $14,971 an average starting salary for a new attorney; $21,872 the average after five years of work in legal services. A reduction in branch offices means higher telephone bills and more transportation costs for outreach and visits to clients who cannot get to the remaining offices. Costs for rent, utilities, library books, supplies continue to go up.

Proposed reductions in appropriations must be considered in the light of these harsh realities.

My own judgment is that it would be possible -- very painful, but possible -- to sustain a cut of 10 percent, maybe as much as 20 to 25 percent -- and still maintain the essence of this national program. Let me make it clear that the costs would be very high -- disproportionate to the token savings to the overall federal budget.

- The Corporation's ability to monitor and provide support to its grantees would be severely curtailed, at a cost to accountability, sound program management, and quality of service.
- Local program staff -- lawyers and paralegals providing direct service to clients -- would be substantially reduced.
- Program offices would be consolidated -- reducing physical access particularly for eligible clients in more sparsely populated areas.
- It would be extraordinarily difficult for programs to sustain more costly efforts to reach out to clients with special access problems -- persons in nursing homes and institutions, homebound clients, persons living in isolated areas.

This Subcommittee has always been particularly concerned about services in rural areas. You recognized the additional costs of getting legal help to people outside of the cities, and you provided extra money to offset those costs. We are going to have to be particularly creative to maintain rural service with less money. There is no question, however, that the impact of significant cuts would be harshest for the poor in these areas.

The first level decision about how to absorb budget cuts would be made by the Corporation's Board of Directors. I have no doubt that any Board would try to cut first and as far as possible, the Corporation's direct expenditures. But as this Subcommittee knows, those amount to only $21 million.

We are very proud of our success in keeping down our administrative costs and will match our record in this area -- not just with any federal agency but with any comparable effort in the private sector as well. This year, we are spending $5.7 million on management and administration -- less than two percent of our total budget. Realistically, I do not think there is any way we can make big cuts in these expenditures without seriously impeding our ability to administer this program in a manner that is accountable to you and to the American taxpayers.

The balance of the $21 million that we spend directly is for training, technical assistance, and support to local programs. The Corporation is unique in the extent of its direct efforts with its grantees to help maintain and improve management, financial accountability and the quality of service. Substantial reductions in these activities would have implications for quality and productivity. In times of tight budgets and diminishing resources, legal services programs are going to need more, not less, support and assistance to maintain high quality service and to deal with the management of scarce resources.

Even if these direct expenditures are pared to the bone, however, the bulk of any substantial budget reduction would have to be passed on to local programs.

My best estimate is that a cut back as far as $280 million, maybe as far as $260 million, could be spread fairly evenly among programs. Local program boards would have to make their own decisions about changes in staff, program structure, and substantive priorities. The Corporation would make a major immediate effort to help programs develop creative approaches to maintain as much service capacity as possible.

Once you go much below these levels, however, I see little option but the complete withdrawal of service from some areas of the country. This Subcommittee is very familiar with the maps that display the expansion progress of the past five years -- progress that brought us this past year to the point where every part of the country was covered by a legal services program operating at minimum access. At budget reductions of 25 percent or more, the blank spaces would reappear on those maps. We would move rapidly back to the point we started in 1974, with a few legal services programs, operating in population centers. That would be a national tragedy.

Let me say just a word about a budget of $100 million. We recognize that the vote in the Senate Budget Committee was a major victory for legal services. We are deeply grateful to those

Committee members, and particularly Senator Hollings, who accomplished it.

As the Senate and the entire Congress consider and ultimately resolve the question of the appropriation level for 1982, I urge you to keep in mind that a $100 million figure puts this program back even further than where it was in 1974. Then, legal services was funded at $77 million. A figure of $100 million today is actually only $53 million in 1974 terms -- or 30 percent less than where we started. Just to return to 1974 levels -- and I sincerely hope no one wants to do that -- would take $136 million.

Legal services today is a very small program in federal budget terms. There is not a lot of waste and fraud to eliminate. There is not a huge administrative bureaucracy to go after. There are no inflated salaries, no frills, no fat.

Of course, we can make cuts, if we have to. And we would make them as fairly and as creatively as possible. But in the end -- there will be only one result -- fewer clients served.

V. Legal Services As Part of A Multi-Purpose Social Services Bloc Grant

Before concluding my statement, I do want to comment briefly on the idea of consolidating legal services with a number of other programs in a multipurpose bloc grant for social services. Initially, of course, this appeared to be the approach the President would recommend, and I realize it is still an option Congress could consider. There is little question, however, that a consolidated bloc grant approach would kill legal services, almost as effectively as directly writing it out of the budget. It should be rejected for four compelling reasons.

First, it would destroy the independence of legal services and subject the program and its attorneys to political pressure. It was precisely to avoid the political manipulation of legal services that Congress established an independent nonprofit Corporation to administer appropriated funds. Many of the legal problems of the poor involve disputes with public agencies or officials. Others are with powerful interests that have particular political influence with those public officials. An insurmountable conflict of interest would be created if decisions about funding legal services were placed in the hands of those same officials against whom poor people have complaints for which they seek legal help. The very limited experience with state or local funding of legal services provides repeated examples of restraints on representation (for example, no legal help on matters involving the state welfare agency). There are other examples where funding was withdrawn because of political pressure from defendants in successful actions brought by lawyers for the poor.

Second, a consolidation approach would actually impose a new level of bureaucracy and higher administrative costs on a program that is now a model of administrative simplicity. The values normally associated with consolidation, such as local discretion, diversity, flexibility, and simplified administration, are already built into the legal services program by statute, regulation and administrative practice. Legal services funds now flow directly from the Corporation to the provider of services. The consolidation approach would impose a middleman that does not now exist.

In the most real sense of the word, the Corporation already provides a "bloc grant" to its recipients. It is the local lawyers and clients, not a set of bureaucrats in Washington or at any other level of government, that determines the nature of legal services to be provided and the method of delivery. The result is a program that is remarkably diverse and uniquely adapted to particular community needs.

Third, consolidation of the nature envisioned by the President would subject legal services to intense competition in every state for severely curtailed social services funds. Unlike most of the other programs identified for consolidation, there is not now any shared responsibility between state and federal governments for legal services. Given the demand that will certainly be heard for services for which the states have already assumed responsibility, legal services cannot expect to do well in the competition for funds. This situation is made even worse by the politically sensitive nature of legal services and the potential for conflict which I have cited.

Fourth, a shift away from a national program to a state-by-state administration of whatever legal services might survive eliminates the capacity for national support, training and technical assistance that has been an essential factor in the efficiency and effectiveness of legal services. It is significant that not just the legal services community but the legal profession as a whole looks to the Corporation for leadership on issues like delivery design, the application of technology to legal practice, and the development of standards for quality legal work. All of that would come to an abrupt halt.

The consolidation of legal services into a broad social service package is not an approach that can be justified in either budgetary or programmatic terms. It is a denial of the purposes for which Congress established this program. More fundamentally, it is a rejection -- for the poor -- of the values I identified at the outset of this statement -- values I know the members of this Subcommittee share. They are values this society cannot afford to deny.

VI. Conclusion

Let me conclude by emphasizing again our own understanding of the difficult situation in which this Subcommittee must review the appropriation for legal services. We know of your personal commitment to this program -- the record on that is clear.

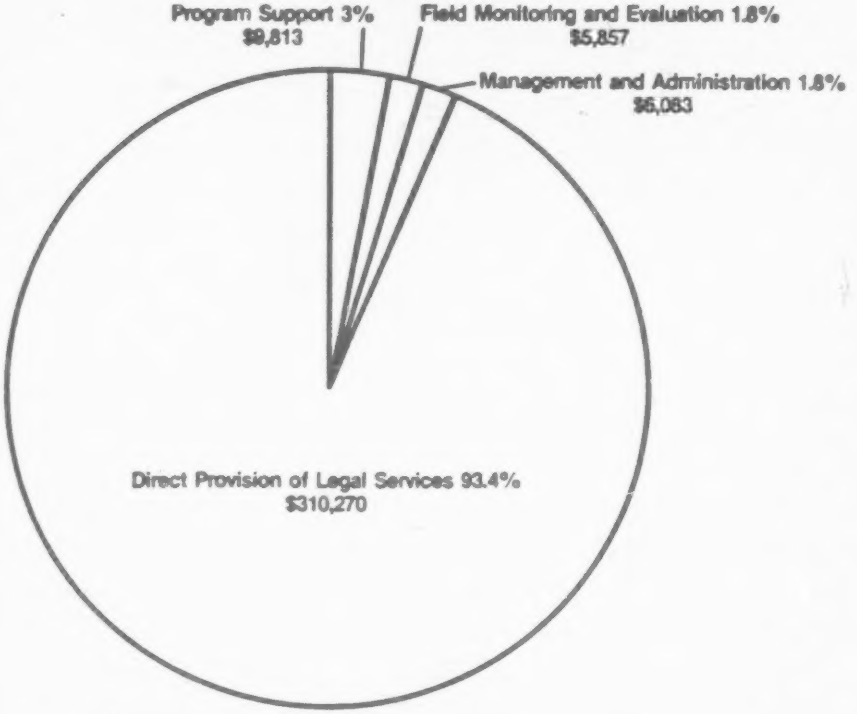
The essential need is to preserve a federal commitment to aggressive independent legal representation of the poor, and to prevent as much as possible the erosion of the delivery system that is now finally in place.

Our appropriations request is the most modest the Corporation has presented to you in all the years we have worked together. It may be the most ambitious, in terms of the budget and political realities we face today.

We know we can depend upon your own continued support and can assure you that we will work closely with you to preserve the essence of the program in the difficult days ahead.

Chart I

LEGAL SERVICES CORPORATION
1981 DISTRIBUTION OF RESOURCES
(DOLLARS IN THOUSANDS)



Includes all sources of funds: 1981 appropriations, balances brought forward from 1980, investment income, donated services, miscellaneous receipts.

Chart II

DISTRIBUTION OF CASES CLOSED BY PROBLEM

MAJOR PROBLEM GROUPINGS

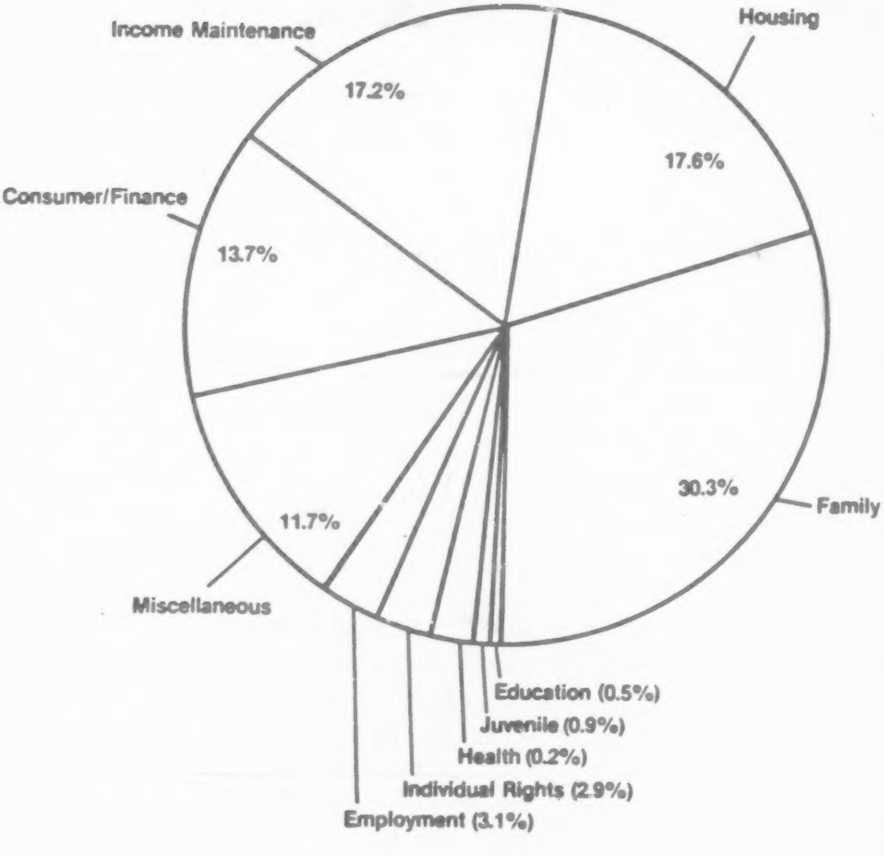
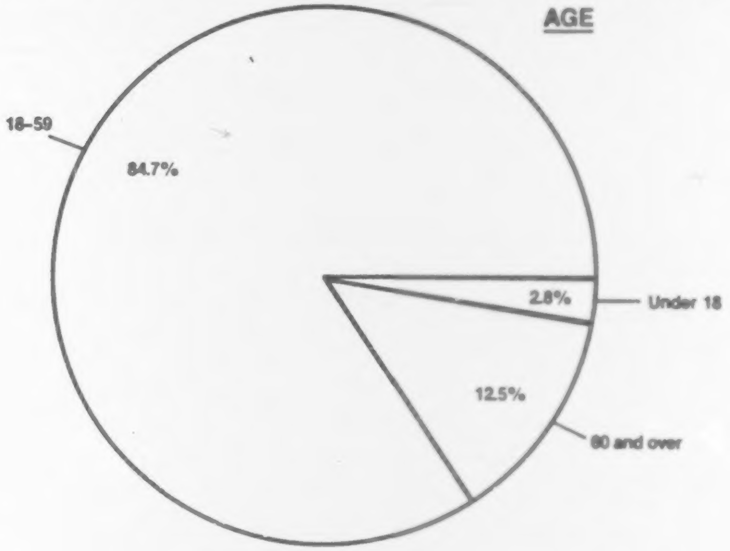
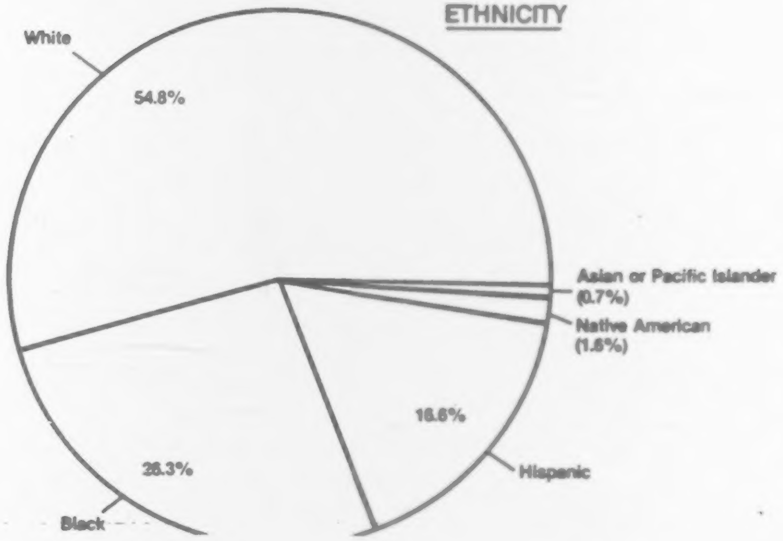


Chart III

DISTRIBUTION OF CLIENT CHARACTERISTICS


AGE


ETHNICITY

CONTINUATION OF CORPORATION

Mr. **Bradley**. In addition to the statement, we have just prepared a fact book of what we call characteristics of our local programs. I am not sure whether you want to put this in the record. I certainly would like to leave with the committee our recent annual report which we file officially with GAO and OMB. I want to make sure you have a copy of that.

I would like to begin, if I could, Mr. Chairman, by personally thanking you for your recent, courageous efforts of cosponsoring the legislation to reauthorize the Corporation for next year, especially in light of the fact the administration is recommending discontinuation of the program. You especially, and Mr. Hollings, who is not with us today, for years have been very supportive of the Legal Services program. I suppose there is no other Senator this year who finds himself in the dual role, with you also being a member of our Oversight Committee on the Labor and Human Resources Committee and also being chairman of our Appropriations Committee. We are indebted to you and to Mr. Hollings and the other members of this committee who have so vigorously supported adequate appropriations for the Corporation through the years.

STATE OF LEGAL SERVICES

What I have done, Mr. Chairman, is submitted a more detailed statement. I would like to make a brief opening statement and state it is a pleasure to be here this morning. I am proud to report to you on the state of the Legal Services Corporation and the approximately 335 programs that we are currently funding.

In 1974, the U.S. Congress passed the Legal Services Corporation Act for a very fundamental reason. It was simply to provide equal justice to persons who are unable to afford an attorney. And 7 years later, we have made tremendous progress toward that goal. We have accomplished more than anyone would have predicted when the act was finally signed into law 6 years ago.

In 1975, the Corporation inherited the Federal Legal Services program from the Office of Equal Opportunity when Legal Services' lawyers in that year were providing service in a relative handful of jurisdictions concentrated primarily in the major urban areas of the Northeast, the West and the Northwest. We have brought it to a point today where minimum access to legal services is a reality for poor people in every county of America. That is, 3,106 counties in all 50 States, Micronesia, the Trust Territories of the Pacific, Virgin Islands, Guam, and Puerto Rico.

Today, approximately 6,200 lawyers and approximately 2,800 paralegals are working full time to provide legal assistance to poor people in approximately 1,500 neighborhood offices operating in these jurisdictions. Their work is supplemented by the participation of thousands of attorneys in private practice. Access to justice, as we have talked about it for years, a meaningless phrase to most poor people in 1975, is now within the realm of possibility.

ACHIEVEMENTS OF LEGAL SERVICES

This remarkable achievement happened simply because the program has had the aggressive and vigorous support of this subcommittee, of the majority of the Members in the U.S. Congress, of the last four Presidents of the United States, and of State and local bar associations in every part of this land.

It happened because thousands of Legal Services workers have dedicated their lives to long hours, low pay and difficult work to make sure that the law works for the poor.

Most of what we do in Legal Services never makes the headlines. Unfortunately, a few cases we have been involved in do make the headlines. Most of what we do rarely attracts the attention of anyone other than the poor persons who are directly affected by the service we provide, but it makes a life and death difference to the poor people who bring their problems to a local neighborhood law office. The chart accompanying my testimony provides the statistics about that work. You will see from those charts in my formal testimony that 30 percent of our cases are family law, 17 percent of our cases are housing, 17 percent income maintenance, social security and so forth, 14 percent are consumer related and finance problems and the remaining of the cases involve education matters, juvenile matters, health problems, individual right, employment, minimum wage, and so forth. Behind the statistics are about 1.5 million low-income persons who received help from us last year. These are women seeking financial support for our children. These are elderly couples struggling through the bureaucracy to get the social security checks or SSI benefits to which they are legally entitled by laws passed by this U.S. Congress. Low-income tenants' utilities were cut off because their landlords didn't pay their bills on time; residents of nursing homes who are not getting the care they are paying for; and children with severe learning disabilities who are being forced out of regular classrooms.

Mr. Chairman, I submit that Legal Services is a program that has worked and it has worked well. It has accomplished precisely what Congress intended when it enacted the legislation in 1974. And it has done so without creating an inflated bureaucracy and without wasting Federal money. The investment we have made in this program last year with $321.3 million has been small in terms of the total Federal budget, but the return on that investment has been, in my opinion, extraordinary.

I come before you today extremely proud of what we have done and what the attorneys and persons in Legal Services have done in the last several years. You can also be proud, Members of the Congress, about this. I think the citizens of this land can be proud of what has been accomplished.

BUDGET FOR LEGAL SERVICES CORPORATION

But I also come before you today somewhat amazed, bewildered and at times angered because the administration is recommending the elimination of this program. In January, we submitted to you a reasonable and in our opinion fully justified budget for 1982. This budget was adopted by the Board of Directors of the Legal Services Corporation—

11 persons appointed by the President of the United States and confirmed by the Senate. The Chairman of our Board at this time is Mr. F. William McCalpin, an attorney in private practice in Missouri, and secretary of the American Bar Association, for 20 years he has been a national leader for delivery services to low-income persons.

A year ago the Board started preparing the budget and last September adopted basically the $399 million budget that is before you today.

We think that this budget we submitted seeks to maintain the minimum access program the Congress has supported for the last 5 years and also provides the necessary support to assure the continuation of high quality legal assistance to poor clients who need our representation.

However, I would be less than candid if I did not say that everyone, I think, in this room, in this Congress, in this land, and certainly Legal Services knows that this is probably not the year that Congress is going to consider any significant increases in our appropriations, no matter the amount of the need, the need and the amount of the effect of inflation on our current delivery system. At best those of us at the Corporation and our Board will have to tighten our belts and continue to make our already stretched dollars go as far as possible to meet our client needs. This Board and the staff of the Board is committed to doing just that.

EFFECT OF BUDGET REDUCTION

We recognize that we will probably have to absorb a significant budget reduction this year. As this subcommittee knows, the administrative part of this program is already bare bones, less than 2 percent of the appropriated fund goes for the direct management and administration of the program.

We can try to cut back on our administrative overhead and we continue to do that year after year. We can cut back on the level of training, technical assistance, and support that we provide to local legal services attorneys and workers. But in the final analysis, there is no way to absorb budget cuts without ultimately reducing legal services to clients on a daily basis because that is where approximately 94 cents out of every $1 goes this year.

If the cuts go too deep, certainly if they go down to the levels of $100 million, $150 million, $200 million, then we will see the very rapid dismantling of the minimum access plan that we have just completed in the past year.

COMPLETION OF MINIMUM ACCESS

If I could, Mr. Chairman, Mr. Rudman, graphically show you the state of Legal Services until the time the Corporation started. If I can refer to these charts perhaps. We have smaller copies of this I will submit to you for the record.

This is basically the Legal Services picture throughout the United States as it looked in 1976, and when the Corporation started its minimum access plan. You can see the very few shaded areas. The white areas simply meant there was no legal services being provided in those areas. The various different shades meant that in some areas we had the equivalent of 2 lawyers for 10,000 persons. In other areas it meant that we had less than the minimum access plan. When we, working closely with this committee and the staff, conceived of the new minimum access plan, we simply came to the Congress and said, there are millions and millions of low-income people in this land who live in States that do not have access to free legal counsel when they have a legal problem. As a consequence, you started over a period of 4 years of increasing our appropriations substantially for one reason and one reason only, and that was to establish minimum access—2 lawyers for every 10,000 low-income persons based on the 30 million people as determined by the 1970 census—equitably and fairly in all parts of the country.

You can see from fiscal year 1976, and this is the year 1977, you will see more areas of the country shaded in. If I can switch my maps for just a moment, you will see in 1978, that is the year we had a substantial increase in our appropriations by the Congress and we made tremendous progress in completing access. And with the last appropriation you gave us in 1980. Now I am happy to report to you poor people have access to legal services in every county in America. This white dot here I just found out was Salt Lake, which is the Great Salt Lake. I am going to shade that in. That is now the picture.

EFFECT OF ADMINISTRATION'S PROPOSAL

If the cuts go down to the level of $200 million or $100 million, then what you will basically see, in my judgment, is dismantling of what we have put together for the last 4 or 5 years. The blank spaces on the map, the first map, will probably appear. We will be back where we were in 1974 where millions of poor people lived in States with no legal services.

I have to point out for the record if the Congress adopts the administration's proposal, then probably the entire map will be white. There will be no Federal funding for legal services anywhere in the country.

We will be back not to 1974, not to 1965 when we initiated the OEO program, but back to the 19th century when legal help was available to the poor and principally only on a charitable catch as catch can basis, and in most places, especially in the Deep South where I am from, not even that minimal level of charitable services. The elimination of Federal support for legal services is a false economy move. It would mean putting a price tag on justice and telling 30 million poor people in this country, "You just simply can't afford justice." And I know the members of this subcommittee, I am confident, do not want that to happen. I sincerely believe the majority of the Members of the U.S. Congress don't want that to happen and I cannot believe the President of the United States really wants that to happen.

That is my brief presentation to you today, Mr. Chairman. I will be happy to attempt to answer any questions that you and Mr. Rudman might have. There are other members of my staff with me today and we will be happy to provide the committee answers to questions.

Senator WEICKER. Senator Rudman.

Senator RUDMAN. Mr. Bradley, I would like to ask you a few questions which have been troubling me about Legal Services Corporation. I think even those of us who have had very tense and sometimes tumultuous adversarial relationships with Legal Services Corporation, such as

I did for the nearly 7 years I served as attorney general of my State, have come to recognize the basic need of the kind of services that you deliver and have a real understanding of the importance of protecting the rights of individuals are who cannot afford their own legal services, be they constitutional or other. But there have been a number of problems with the Legal Services Corporation which I think brings us to the point we are at today and which, to some extent have exacerbated the kind of actions taken against the Legal Services Corporation.

Those of us who would like to see this corporation continued in some form are, nevertheless, seriously troubled by a number of things. I just want to go through some of them, if I cculd. Are we under the 5-minute rule?

Senator WEICKER. Take as much time as you want.

CLASS ACTION ACTIVITY

Senator RUDMAN. First, I think it would be instructive for the subcommittee, and I am sure you have the statistics someplace, to tell us what percentage of your total activity has been in the area of class actions.

Mr. BRADLEY. It is 0.2 percent of 1 percent, a very, very negligible number of our total cases.

Senator RUDMAN. So the charge that is often made—that the Legal Services Corporation has generated a great deal of litigation, be it right or wrong, in the area of class action you would say that is a false statement?

Mr. BRADLEY. I would strongly reiterate that is an incorrect and false charge.

PROMOTION OF PERSONNEL

Senator RUDMAN. There has been some problems with some of the people who have run some of your offices. This has received a great deal of press publicity. I will take one example, the Director for region 1. He was appointed Director of region 1 even though he had, while in Puerto Rico as a member of the Corporation, been incited for contempt of court and for violating a Federal district judge's order against interfering with Navy testing on one of the Islands. Given that, and since lawyers of Legal Services Corporation are also officers of the court, I am wondering why someone would be promoted who had disobeyed an injunction by a Federal court and disregarded the standards of ethics for being a lawyer. Can you answer that for me?

Mr. BRADLEY. I will attempt to do so, Mr. Rudman. I don't mean to correct you. Actually it is a person for region 2, not region 1.

Senator RUDMAN. I am sorry.

Mr. BRADLEY. Region 1 is Boston, region 2 is New York. Mr. Salvador Tio is a long-term Legal Services' attorney in Puerto Rico. When the prior director of that region was appointed to the bench by the Governor of the State, there were quite a few applicants of whom Mr. Tio was one. He has been a long-time attorney in the program in Puerto Rico. It is my understanding, and I can submit a much more detailed response for the record, that he as an attorney was present at the time that certain clients were expressing their concerns about the naval activity on that particular island. It was my understanding that he was arrested in his capacity of advising his clients. He was, it is my understanding, convicted. The case is on appeal. I talked to several persons who were involved in the case. I will not represent to the committee he is going to win on appeal. I have spoken with several people intimately involved in the case and representing him on appeal who said that they cannot believe he will not be exonerated on appeal.

The question, as I understand it that you are asking, is whether the person should have been offered that job because of the criminal charge that had been filed against him, whether that should have disqualified him as an attorney working for the Legal Services Corporation.

Senator RUDMAN. That is really not my question. I believe in due process, probable and otherwise. I am not talking about whether he should be employed, he was. My question was should he have been promoted during the pendancy of that criminal charge. That is really my question.

Mr. BRADLEY. I have to speak to a certain extent from my own personal experiences, Mr. Rudman. I don't know the facts and I don't know the details of that case. I don't think the details of that case would have warranted his exclusion from consideration for promotion to a position. I remember very, very well and I hate to personalize my testimony but I also was a staff attorney once and was arrested by the police in Florida. The charges were dropped against me. There was no outstanding court order. I was present with clients at a public housing project I was arrested and hauled off to jail in handcuffs. They dropped the charges against me. I guess some people will say I am tainted and should not be sitting here at this table today because of that fact. I am sure there are many legal services' attorneys during the years involved in representing their clients have been involved in similar situations.

I am not apologizing for Mr. Tio. I think it would be the responsible thing for me to do to wait and see what the appellate court does in terms of that charge against him and act accordingly after there has been final adjudication.

Senator RUDMAN. I am glad to have your answer on the record because that has been the subject of some discussion. A charge has been made about your agency being somewhat less than responsible in your promotion practices and disregarding some things you should not have disregarded. Whether I agree with your explanation or not or your conclusions, I think it is good to have it on the record.

The next question I have really relates to the statutory provisions which forbid the use of Federal funds to aid in lobbying efforts. One of the charges often made against the Legal Services Corporation, I think with some validity, is that the Corporation has been involved through its lawyers in substantial lobbying activities which could well be in violation of Federal statutes, most recently Senate Concurrent Resolution 9 and the Helms amendment, which, obviously, you had some concerns about. There was a great deal of lobbying activity by people employed by Legal Services Corporation, paid for by Federal funds. How do you explain that?

LEGISLATIVE ADVOCACY

Mr. BRADLEY. I am glad you asked that question, Senator, because of all of the charges, all of the allegations, all of the opposition that has surrounded Legal Services when taken in the entirety, that one issue I will quote: "illegal lobbying activity" is the one I think we are probably the least guilty of and about which most people are confused. I sat in the Senate Chamber until midnight listening to the distinguished Senator from North Carolina. I was amazed, amazed that he stood on the Senate Chamber and said that: "Mr. Bradley, the ABA, and employees of the Corporation are standing outside in the ante room lobbying in direct contravention of the law of the U.S. Government." I have with me a copy of the act. The act clearly says: "the act passed by the U.S. Congress" in sections 1006 and 1007 of the Legal Services Corporation Act employees of the Corporation are prohibited from lobbying except when we are invited to do so by members of a legislative body or except when the Congress is considering a matter that directly affects the Corporation. I would submit to this committee and to the Members of the Congress that this appropriation bill directly affects the Corporation and thus I am legally authorized and entitled to be here.

The second prohibition applies not to the Corporation but to those 15,000 employees of the 350 local programs. It also precludes, and the Congress did this and there is no other issue in the legislative history of the Legal Services Corporation Act that more clearly addresses this point and more clearly explains this point, it prohibits attorneys in local programs involving themselves in legislative lobbying activity, except in three instances.

One exception if they are invited to do so by a member of a legislative body, on the State, local, or Federal level, and that happens frequently. Time after time after time our attorneys are asked by chairman of State legislative committees, of city councils' of county governments, "what is your opinion on this bill that we are considering." I can submit for the record countless letters we have received from Governors, from mayors, from others testifying to the fact that our attorneys have played a tremendous role. I think Congress recognized that in carving out that exception.

The second exception is equally clear. It is when the matter pending directly affects that program or affects the operation of that program. And the third major exception, and I think it is one that is the most important and seems to cause the most confusion but for me as an attorney and for you gentlemen, it seems the easiest for me to understand and explain. We can represent in any forum anywhere, a legislative forum or any other forum, the right and interest of a client as long as we are representing a client. Our attorneys do not appear before the legislature of New Hampshire or before the New Haven City Commission on our own motion or our own ingenuity.

We don't sit there and conceive of "Oh, my goodness, there is something happening over in the State capitol, we have to put a stop to it." We go there, represent a client and we identify the fact we are there representing an eligible client. Congress made that issue crystal clear when it authorized and passed the Legal Services Corporation Act in 1974. I continue to be amazed that we are charged with illegal lobbying activity.

What I have stated to the Oversight Committee on the House side and what I will state if I have the opportunity before Mr. Weicker's committee over on the Senate side, that is the current law, that is the current provision. If Congress sees fit to change it, which incidentally I hope you don't, then you will have the opportunity to do so. But I think a lot of people are confused as to what is permitted and what is prohibited. I am sorry I took so long.

STATE LEGISLATIVE ADVOCACY

Senator RUDMAN. I am glad you did. I am glad that is on the record. That has been an often made charge. I want to follow up with one short question. I understand the exclusions, I am familiar with the two sections of the United States Code that you read. I am particularly familiar with your right to be invited in before State legislatures to testify, and also understand that you are representing a client.

Do you think that it would be a fair charge to say that, in a number of instances where there is not a client that has expressed a particular objection to a particular statute that is being considered at the State level, that Legal Services Corporation lawyers have, in fact, generated and suggested to the clients that they should be represented before particular committees, that the impetus comes from the Corporation's attorneys rather than the other way around?

Mr. BRADLEY. Yes, I think in some situations I think that that is a fair allegation and a fair charge. I might point out that we are very sensitive, my Board and the staff that manages this program, are more sensitive about this issue than anything else.

For instance, at the last meeting of the Board of Directors of the Corporation, which was 7 weeks ago here in Washington, they adopted a new regulation imposing even tighter controls over the attorneys in our local program about legislative activity. Those attorneys have to have a signed written retainer by the client specifically requesting that we appear before that legislative body. We are doing monitoring through our regional offices. We are doing everything we can because we realize the extraordinarily sensitive nature of poverty lawyers walking the legislative chambers. We are aware of that and we are trying to operate consistent with what the law requires.

STATISTICS ON REPRESENTATION

Senator RUDMAN. Last question, Mr. Chairman. I want to refer to your charts on pages 4 or 5 so we have a complete understanding of this because this, to some extent, gives us the accurate facts on who you represent and what.

According to the chart on page 4, about 85 percent of your representations is in the 18- to 59-age group, which tracks the general population, actually a little higher, but about right. Under ethnicity, 55 percent white, 26.3 percent black and 16.6 percent Hispanic, and the balance scattered. That is not in anyway unusual or unique.

On page 5, tying it again to the charge about the kind of things that Legal Services does or does not do, could you give us just a little flavor of each of the major sections of the pie chart starting from left to right, consumer finance, income maintenance, housing and family, so we have more of a feel, particularly for the record because I think I do, as to just what each of those records means in terms of the kind of services you are delivering, the kind of problems that these people are enduring and the kind of cases that you are confronted with. I think it is interesting before you answer that, if you look at page 6, to note that only 11.6 percent of your cases finally have to be resolved by a court, which I think is somewhat lower than the general track of litigation, at least in my own State of New Hampshire. If you would answer my question relating to page 5.

Mr. BRADLEY. I will try to do so, Mr. Rudman.

Senator RUDMAN. And briefly so you can give us a feeling and flavor of each of the things you do here.

Mr. BRADLEY. It is clear from the chart and I think from every Legal Services program in all 50 States of the countless clients who walk into our door every day, that the majority of those clients have a family related problem, a child abuse problem, a desertion problem, a paternity problem, a divorce problem, directly related to the family unit where the husband has abandoned the family and we try to obtain support, where there might be an adoption issue or child custody issue, routine family relations usually involves, unfortunately in most instances, it involves conflict between one poor person against another poor person. That is the bulk of the work in every Legal Services program everywhere.

It breaks out into the housing area. Principally two areas of housing and the private housing, landlord/tenant, then you have the Government housing, and the division of those cases is about 50–50 within that. Where simply in many instances a landlord will come along and just turn off the electricity. The second case I ever handled was in Belle Glade, Fla. An elderly woman came into my office, she went to her apartment, there were two padlocks on her door and couldn't get in. I went over there with her and I couldn't figure it out. Finally we tracked down the landlord. He said, we didn't mean to put locks on your door, it was supposed to be on somebody else's door. We got that resolved.

It is frequently a case in public housing, especially 5 years ago, that public housing officials, and it also applies to private landlords, would illegally evict persons, dispossess them, put them out on the street corner with all their furniture and say that is tough, that is the way we have done it for 100 years and that is the way we will continue to do it. That is illegal. The law says you cannot do that. The law provides a remedy for evicting people for whatever reason. We make sure landlords, public or private landlords, comply with the law.

The income maintenance covers a wide range of everything, basically those programs that the U.S. Congress has passed, that is the food stamp program, black lung, social security, the SSI, the school breakfast program, the summer lunch program, you name it. All of those programs, I guess you would call them, benefit programs adopted by the Congress, where usually a client goes down in a typical case and applies.

For instance, just recently in Cedartown, Ga., a middle-aged man—he was approximately 45 years old—was injured on the job. He went down and applied for social security and he filed a claim because he was permanently and totally disabled. Social Security denied his claim and said in our opinion you are not totally disabled. So then he goes over to the vocational rehabilitation program to try to enroll in their program for job training to go back to a new skill. That agency established by the Congress said you are not eligible because in our opinion you are permanently and totally disabled. What was the poor client to do? Finally we got it resolved favorably by a ruling from an administrative law judge that he was totally and permanently disabled.

The consumer and tax problems, usually repossession of automobiles, furniture, truth in lending violations. Unfortunately, a lot of poor people sign a lot of contracts. They take out a lot of insurance policies. In Tennessee recently, in the State Tennessee Insurance Commissioner, they were investigating the industrial loan, they had one elderly person who had 29 different policies. Everytime everyone would come by her house she would take out an insurance policy. We went in and attempted to correct that kind of abuse. So those are the types of cases that fall into these areas.

Senator RUDMAN. Thank you very much. You are certainly an excellent advocate for what you believe.

Mr. BRADLEY. Thank you.

Senator WEICKER. I think the Senator's questions are good solid questions in terms of the concerns of many. I think the answers are outstanding answers. I am glad the exchange took place.

I have really no further questions, Dan. My position on this simply is that we can't have two standards of justice in this country. The law is what keeps us together as a Nation.

I am sure there are many of us that feel an ax brought by a Legal Services lawyer is a nuisance. So is it if it is brought by a private lawyer. Who enjoys a lawsuit? Nobody does. But the fact is everybody has to have confidence that he has access to a lawyer. That is the key. And the minute that confidence evaporates, then people take matters into their own hands.

SUPPORT FOR CONCEPT OF LEGAL SERVICES

Mr. BRADLEY. I couldn't agree with you more, Mr. Chairman. If I could personalize it, I think that is the issue before this Congress, not so much the amount of money that you appropriate. The real issue is whether or not this Congress does in fact continue to support the concept you just enumerated and I am confident that they do.

Senator WEICKER. I think they do. I might add also, I am proud of the American Bar Association. I think many times in the past, aside from what resolutions they pass, they don't get out there and really work for it. I don't mind saying they are out there working on this now. You are talking about lawyers who are not a part of the Legal Services Corporation, but they are lawyers and they understand the value of the law.

So in any event, I think all the issues have been raised very eloquently by my colleague and responded to with equal eloquence by you. It is not going to be an easy fight. I hope that people will speak up on this issue because it is really something that is basic to all Americans whether you are a Services' lawyer or not.

Mr. BRADLEY. Mr. Chairman, if you permit me, because I wasn't being facetious, as you know, as Mr. Rudman knows, we are a private nonprofit organization. We have a Board of Directors appointed by the President. Five of those positions are now vacant. The other six positions will be vacant the end of June of this year so President Reagan will be appointing all 11 of our Board members by early summer, of course subject to confirmation by your Labor and Human Resources Committee.

I, in fact, honestly do not anticipate, and I am not making plans to be back before this committee and because of that fact I want to as best as I can to thank you personally for what you have done for us for years. It bothers me immeasurably, you are going to have witnesses here today—when I was in Tim's office a moment ago, I happened to pick up the statement of one of the witnesses. I have never known her to be involved in Legal Services before, it bothers me when witnesses come before this committee and say things that are not accurate. I read the statement and I wouldn't believe it. I cannot believe that a witness would come before you and just factually state things that are not true.

Senator WEICKER. That is up to us to get into.

Mr. BRADLEY. In conclusion because I feel very, very strongly——

Senator WEICKER. Let me say one thing now, these witnesses asked to come, it is a little out of the ordinary to have them here at an appropriations hearing but I want to hear their point of view. I think you did Legal Services immeasurable good in your response to the tough questions of Senator Rudman. The concept is correct, Dan, the concept is correct.

It is going to withstand the tough questions. And the more tough questions that are thrown at it, the more comments that are made, the better understanding there is of the concept. I am still convinced, I think so very few people understand the value of the law in our society. This isn't a matter of education or economics. As we get more affluent, as more and more people get more affluent, we seem to care less and less about the origins of our greatness.

I was reminded of the fact several times I have heard reporters either from the written media or the electronic media place copies of the Bill of Rights in front of people and ask them to sign it as a petition. They won't sign it. That is not so upsetting except for the fact they say they won't sign it because it is some sort of a Communist document. The words haven't changed. The same language, the same concepts that brought us to the point where we are. We have changed, society has changed but the origins of our greatness haven't changed.

They are not going to change and as we realize our shortcomings through the legislature, through the legal process and make it a better society, that is nothing to apologize for. As I said, you have done an outstanding job here.

Mr. BRADLEY. It sounds dramatic, but I believe on this note I will close. Just across the street there is the Supreme Court building. It is a majestic building, I see it everyday when I am on the Hill, it says, "Equal Justice Under Law."

What I am afraid of is if the Congress abolishes the Legal Services Corporation and denies funding for this program, for millions and millions of poor people, equal justice will mean absolutely nothing. That is the way I see it. Thank you very much.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. Dan, thank you very much.

I have some questions that I will submit for your response.

[The following questions were not asked at the hearing but were submitted to the Corporation for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

FUNDING TO MAINTAIN MINIMUM ACCESS LEVEL

Mr. Weicker: I understand you have expanded your program dramatically over the past four years in order to obtain the goals of your minimum access plan, that is providing two attorneys for each 10,000 poor persons in this country. Since the goals of minimum access were just reached in December of 1980, I am concerned about what will happen to this minimum access approach in the future.

In light of current budgetary constraints, how much funding would be necessary to maintain this plan during the 1982 fiscal year?

Mr. Bradley: An appropriation of $352 million would permit the Corporation to grant the full 10.5 percent inflation adjustment that is part of our budget request. That increase would assure that the programs could meet higher costs without reducing current service capability.

Mr. Weicker: Should you receive a significant reduction, say for example, to the $200 million level, how would these funds be distributed? In other words, would you eliminate assistance in some parts of the country to insure you maintain viable programs in other areas?

Mr. Bradley: The Corporation's Board of Directors would make the specific allocations of the 1982 appropriation. As you know, by July of this year, the terms of all existing board members will have expired. I assume that a totally new board would be making those decisions. As I indicated in my opening statement, there are not many options about how substantial reductions would be absorbed. After cutting management and administration to the bare bones, and even if all support and training were eliminated, major cuts would still have to come out of direct client service. At $321.3 million, the Corporation spends $300 million for field programs. At a level of $200 million, I think it would be possible to get about $195 million out to the programs, though the costs in terms of support and oversight would be considerable. Frankly, I do not see how you could spread a cut of that magnitude over all programs. With that kind of a cut, I think any Board of Directors would have to start shutting down programs, in order to keep at least minimally viable programs in some places.

Mr. Weicker: Please provide for the record the effects that a 10 percent and a 25 percent funding reduction would have on services to eligible clients.

Mr. Bradley: A 10 percent reduction in funding would result in some cut in service to clients, particularly when that cut is combined with a probable increase in costs of at least 10 percent. Programs are already beginning to plan creative approaches to try to maintain maximum service capacity even with reduced funding.

At 25 percent, the impact becomes quite clear. A 25 percent reduction in the Carter recommendation of $347 million would be $260 million. Assuming that the Corporation could allocate at least $250 million of that amount directly to field programs, and taking into account all of the costs associated with reducing and consolidating program operations, it is likely that the reduction in staff providing direct service to clients could be as high as 30 to 40 percent.

WHAT WOULD A $100 MILLION LEGAL SERVICES PROGRAM LOOK LIKE?

Mr. Weicker: The Committee on Labor and Human Resources has recommended $100 million for Legal Services in the 1982 fiscal year. What type of Legal Services program could be maintained nationally at such a level?

Mr. Bradley: At $100 million, there would actually be less money available for legal services for the poor than there was when the Corporation took over the program. In 1974 dollars, $100 million is worth only $53 million. Actual funding for legal services in 1974 was $73.4 million. Thus, a $100 million appropriation would put us nearly 30 percent behind where we were when we started.

In program terms, what would be left would be a few local programs, probably operating in urban centers where you could provide the most service to clients with the fewest dollars.

ADMINISTRATION'S PROPOSAL

Mr. Weicker: The Administration has proposed the total elimination of funds for the Legal Services Corporation. Justification for this position is based on the assumption that the private bar can provide a significant level of services and any further needs can be addressed through block grants available to the States for multiple purposes. What effect will the Administration's proposal for Legal Services have on the provision of civil legal assistance to the nation's poor?

Mr. Bradley: The Administration's proposal means, very simply, the dismantling of the minimum access program that Congress has now finally put in place. It would eliminate the capacity that now exists to provide civil legal help to 1.5 million poor individuals and families.

Mr. Weicker: What evidence, if any, is there to suggest that without Federal funding States, and/or the private bar, can provide the current equivalent level of services now provided through the LSC grantees?

Mr. Bradley: There is none. At the $321.3 million level, the Corporation is only paying to meet about 20 percent of the total legal needs of the poor. Contributions from other public sources, and particularly the pro bono contributions of the private bar, have always played a critically important role in supplementing our own minimum access service. In fact, it is the presence of a stable base program, supported with Corporation funds, that makes these other smaller contributions effective. My own guess is that in many places, if the base funding is removed, many of these other resources may disappear as well, because they cannot provide effective service on their own.

It is absolutely unrealistic to expect that the states would or could assume this role. The states have never recognized a responsibility for the provision of civil legal assistance to the poor. In some states, they are already cutting back on the resources they are spending for criminal representation, an area where they have a clear legal responsibility. It is equally unrealistic to expect that private attorneys, through pro bono contributions, can assume the burden of 1.5 million cases for poor people. Pro bono work is critical; it always has been. Given the size of the unmet need, it is essential to expand this effort, not to replace what the Corporation is now doing, but to help fill the 80 percent gap that exists now between our capacity to provide service and the actual need. This program has always been a joint public/

private effort. Neither the federal government nor the private bar can back out now.

Mr. Weicker: In your estimation, what would be the effect of relying on block grants for legal support?

BLOCK GRANTS

Mr. Bradley: As I indicated in response to the previous question, I do not think there is any way that states will, or even can, pick up the responsibility for civil legal assistance. Under the block grant proposals that Congress is now considering, along with other budget reductions in joint federal-state efforts like medicaid and AFDC, states are going to have less money to pay for the services and the benefits they are already providing. I cannot imagine any place where states would back out of those existing commitments to pick up a new one like legal services.

Even if there were not a resource question, there is a serious conflict of interest problem in state funding for legal services for the poor. Much of the work legal services programs do involves representation of poor people before state agencies and officials, usually on issues that involve enforcement of federal law. Poor people cannot have effective representation if their lawyers are paid by the very people against whom they need legal representation.

LSC'S MINIMIZATION OF OVERHEAD COSTS

Mr. Weicker: I understand that you have always made it a high priority to allocate the maximum funds possible to local programs for the delivery of legal services to the poor. Under a block grant arrangement where the States have administrative responsibility for Legal Services, do you believe that the administrative costs for overhead would increase?

Mr. Bradley: I assume they would increase, if any significant number of states opted to provide legal services under a block grant arrangement, simply because every state would have to have some administrative structure to provide for grant management, supervision and accountability. In addition, presumably there would have to be some minimal administrative and oversight responsibility for the block grant system located somewhere within the federal government, adding further administrative costs. Experience with other block grant and revenue sharing programs, I understand, indicates that overhead costs are quite high.

INDEPENDENCE OF LSC

Mr. Weicker: Currently, the Legal Services Corporation is a private, nonprofit organization, specifically established by Congress to isolate the program from political manipulation and interference. Would you envision problems of political interference if the program was redesigned in a block grant format?

Mr. Bradley: I think political interference would be inevitable. Congress recognized this problem, and the importance of doing everything possible to prevent it, when it created the Corporation independent of the states and of the Executive Branch of the federal government.

Mr. Weicker: Do you have any evidence to suggest that state governments would restrict access to the courts in certain types of cases, or terminate grants as a result of particular suits, if a state block grant program were implemented?

Mr. Bradley: Legal services experience with state and local funding is full of just these kinds of examples. States that have provided some funding for civil legal assistance have typically restricted the type of work recipients of the money could do. For example, they have prohibited suits against the state, representation before the state welfare agency, administrative or legislative representation, and class actions. There are examples of restrictions on community legal education, and requirements that representation be limited to certain types of clients, like the elderly, or to certain kinds of cases, like divorces or housing matters.

There are also examples of political reprisals for aggressive representation. In one state, all state support for civil legal assistance was withdrawn as a result of a successful legal services suit to enforce federal medicaid requirements, combined with political opposition of lenders whose practices with regard to poor people had been successfully challenged by the legal services programs.

The history of the old OEO legal services program, when governors had the authority to veto grants to local programs, provides additional examples of political interference. The one most often cited is the California case in the early seventies, when political opposition to aggressive representation of migrant farmworkers, combined with state government chagrin about successful enforcement of federal law to prevent medicaid cutbacks in the state, led to a veto of a grant to a California legal services program. That veto was later overturned by a Republican administration in Washington when an independent investigation of the state's charges against the program were found to be "totally irresponsible and without foundation."

THE ROLE OF THE PRIVATE BAR

Mr. Weicker: The LSC budget request for FY 1982 proposes $30 million for greater involvement of the private bar. While it is unlikely that $30 million will be available for this purpose, do you think that the private bar has an important role in the delivery of legal services to the poor? What do you think is the most effective and efficient use of the private bar in the delivery of legal services to the poor?

Mr. Bradley: Yes. Members of the private bar have an essential role to play in the delivery of legal services to the poor, both pro bono and on a compensated basis. The Corporation recently completed the Delivery Systems Study, a major examination of ways to use private attorneys in the delivery of legal services to the poor. That study showed that there is no single best way to provide services, but that combinations of staff attorneys and private attorneys could provide effective and efficient service, particularly when the precise delivery method was tailored locally to meet particular client needs and to take advantage of particular local resources.

The Corporation and local legal services programs, working with the organized bar, are already doing much to expand the direct participation of private attorneys in our service delivery system, through judicare supplements, contract arrangements, and organized pro bono projects. I expect that will continue, as we look for better ways to meet the needs of our clients, but the amount we can do will of course be limited by the resources we have.

WHAT TYPE OF CASES DO LSC ATTORNEYS UNDERTAKE?

Mr. Weicker: We hear example after example of "horror" stories about legal services. What kind of cases do legal services attorneys actually handle?

Mr. Bradley: The chart that is attached to my prepared statement to the Subcommittee provides a detailed breakdown of the types of cases that legal services attorneys handle for eligible clients: 30 percent are family matters, 17 percent housing, 17 percent income maintenance, 14 percent consumer/finance, and the balance education, juvenile, health, individual rights, employment and the day-to-day miscellaneous legal problems that poor people face.

Mr. Weicker: What percentage of these cases are class actions?

Mr. Bradley: As I indicated to Senator Rudman, only 0.2 percent of all of the cases that legal services lawyers bring are class actions.

RESPONSE TO LOBBYING CRITICISM

Mr. Weicker: Charges about lobbying are also frequently bandied about on the Hill. I understand that the Legal Services Corporation Act, section 1007(a)(5), governs lobbying activities by legal services programs and provides some authority for these activities. What percentage of program resources is devoted to legislative activities by legal services programs?

Mr. Bradley: Less than two percent of all cases handled by legal services programs are resolved through legislative or administrative representation.

ATTORNEYS FEES COLLECTED BY LSC

Mr. Weicker: Senator Bumpers was particularly concerned last year about attorneys fees collected by legal services programs. It is my understanding that, at least at the federal level, Congress allowed fees in order to effectuate proper enforcement of federal laws. Isn't it the case that attorneys fees are actually awarded by the courts, under standards established by state and federal law?

Mr. Bradley: Yes

Mr. Weicker: Do you have information on the amount of attorneys fees actually collected by legal services programs?

Mr. Bradley: In August, 1980, at the request of Senator Bumpers, we gathered this information. In 1978, recipient programs were awarded $494,668 in attorneys fees. In 1979, the amount was $700,571.

Mr. Weicker: Is this a significant source of funds for LSC's programs?

Mr. Bradley: No, as you can see from the figures noted above. These recoveries average less than one-fourth of one percent of the total funds awarded to recipients by the Corporation.

Mr. Weicker: Under what circumstances, or in what type of cases are attorneys fees collected?

Mr. Bradley: The majority of cases in which fees have been awarded have been consumer and domestic relations cases, as provided by federal or state statutes or state court rules of practice. A significant portion of these cases were brought under the Truth in Lending Act and other federal consumer protection laws. Other fee awards have been ordered under various civil rights laws against state and local government units or private defendants, where the court found that the defendant had violated the plaintiff's federal constitutional or statutory rights.

CORPORATION OBJECTIVES

Mr. Weicker : The Corporation has described the achievement of minimum access -- establishing a program for civil legal assistance to serve every county in America -- as a major short-term objective. The achievement of this objective, which was completed in 1980, was a major reason for LSC's budget expanding from $92 million in 1976 to $321 million for 1981 -- an increase of about 350 percent. This 1982 request for $400 million represents a 25 percent increase over the 1981 funding level. What does the Corporation perceive to be its current short-term and long-term objectives?

Mr. Bradley: The Corporation's short-term objectives, as articulated in our 1982 budget request, are to maintain the minimum access level that has been established over the past five years, to maintain and improve the quality of services provided at that level, and to increase the participation of private attorneys in the delivery of service.

The Corporation has not articulated a long-term objective that is comparable to the minimum access plan. Generally, the Board of Directors of the Corporation has discussed long-range needs to meet critical legal needs of eligible clients, *through a combination of public and private resources;* to maximize the impact of available resources; to diversify the delivery system; and to ensure high quality services.

Mr. Weicker: Approximately what would be the cost of accomplishing each of these objectives?

Mr. Bradley: The cost of meeting the short-term objectives would be $399 million in 1982. Costs in future years would depend upon the rate of inflation, offset by continued improvements in management and productivity, but could be estimated at approximately $450 million in 1983 and $500 million in 1984.

The Corporation does not have any estimates of costs for long-term objectives. Clearly, the full costs of meeting even the most critical legal needs of the poor, with high-quality services, is substantial. It is a cost that can be met only with a combination of federal, state, local and private resources, including very major pro bono contributions of the private bar. Progress that is being made now toward more diversified delivery systems, improvements in technology and productivity, and use of alternative means of resolving client problems will be essential to holding down the costs of providing access to justice for the poor.

NON-CORPORATION FUNDING

Mr. Weicker: LSC grantees estimate that they received, or will receive, $44 million in 1978, $40 million in 1979, $42 million in 1980 and $48 million in 1981 from non-corporation sources.

Does LSC adjust the funding levels of grantees because of these additional funds? If not, why not?

Mr. Bradley: The Corporation has not made such adjustments. The purpose of the minimum access plan was to develop an equitable funding base for the delivery of civil legal assistance to the poor in every part of the country. Minimum access funding alone can meet only a fraction of the actual legal needs of eligible clients, and the Corporation has encouraged and assisted programs to seek other public and private funds to supplement the minimum we provide. The success of those fund-raising efforts varies substantially from one program to another, for a variety of reasons.

It would undermine the minimum access approach to adjust basic funding levels according to other sources of funding. There are additional reasons why the Corporation has rejected the idea of making such adjustments:

1. Adjusting for other funds removes the incentive of programs to seek such funds or of other agencies to award such funds.
2. With few exceptions, other sources of funds tend to be very unstable. Many are specifically awarded for short-term purposes. Funds awarded through state and local governments, and sometimes from private sources, tend to be intensely subject to political pressures. Even though the total amount of non-Corporation resources has remained relatively stable over the last several years, there have been substantial shifts in the amounts available to individual programs.
3. Many non-Corporation funds are awarded for very specific and narrow purposes, often limited to certain kinds of clients or for certain kinds of issues. They provide important targetted supplements to Corporation funds but could not replace funds available generally to provide services to clients eligible under the Legal Services Corporation Act.

NEW BOARD OF DIRECTORS

Mr. Weicker: Your entire board is subject to new appointments on July 13, 1981. Has the Administration made any indication of appointing a new board?

Mr. Bradley: None of which we are aware.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

BUDGET LEVELS

Mr. Hollings: The Senate Budget Committee approved the addition of $100,000,000 to the budget category 750 to maintain the Legal Services Corporation. That level of funding would take the program back to where it was in 1976.

At the level of $100,000,000, what would be the allocation between Management and Administration and for the Program Activities?

Mr. Bradley: As you know, the Board of Directors must make final decisions regarding allocations of appropriated funds. Since the terms of all members of the current board will have expired by July of 1981, it is likely that an entirely new Board of Directors will make allocation decisions for 1982.

Assuming, however, that the first effort of any board would be to reduce as far as possible all direct expenditures and to maximize available funds for service to clients, a 1982 budget at $100 million might limit management and administration to $1.4 million and allocate the balance of $98.6 million to program activities.

Mr. Hollings: How much of the $100,000,000 would go to field operations?

Mr. Bradley: If the allocations were made as indicated above, about $1.4 million of the $98.6 million would be spent in the category "Field Operations and Evaluations". The balance, $97.2 would be allocated for direct client service.

Mr. Hollings: How would the funds be distributed between the various activities under President Carter's recommendation of $321,300,000?

Mr. Bradley: President Carter's recommendation was actually $347 million. The following chart suggests allocations at both $321.3 million (the actual funding level for 1981) and $347 million, based on two assumptions: 1) that at $321.3 million the allocations for 1982 would remain the same as 1981, and 2) that at $347 million the allocations would follow President Carter's recommendation.

	$347 million	$321.3 million
Field Programs	$325.3	$300.6
Program Support and Training	10.2	9.2
Field Operations and Evaluation	5.8	5.8
Management and Administration	5.7	5.7

Mr. Hollings: President Reagan has proposed no further funding for the Corporation. What termination costs are the local programs facing?

Mr. Bradley: Local programs would face substantial termination costs. A major expense would be the costs of completing, or arranging for the completion of, open cases. Even if intake were to be closed in the near future, the number of cases still incomplete at the end of the year could be as high as one million.

Other major termination expenditures would include:

- payment of accrued vacation costs for staff, which could be as high as five percent of annual salary levels;
- contributions to unemployment compensation, which would vary depending upon state law, the unemployment insurer, and the ability of employees to find other positions;
- costs of cancelling leases on office space and equipment;
- costs associated with the transfer or disposition of property.

Even without termination, but at a substantial reduction of funds, programs will face many of these same kinds of costs as staff and service capacity is reduced.

Mr. Hollings: Has the Corporation taken any steps towards terminating the program?

Mr. Bradley: No, although we are beginning work to assist programs in preliminary planning for the possibility of substantial fund reductions.

LOBBYING ACTIVITIES

Mr. Hollings: The Life Insurers Conference has supplied information that purports that Allan F. Ramsaur, Tennessee Association of Legal Services, and Bruce Fried, Legal Services of Florida, are full-time lobbyists for legal services programs in Tennessee and Florida. How much of the time of these gentlemen is spent as lobbyists?

Mr. Bradley: Mr. Fried no longer works for Legal Services of Florida. When he was employed by the program, he was registered as a lobbyist in compliance with the specific registration requirements of the State of Florida. He estimates that he spent approximately fifty percent of his time on legislative activities.

Mr. Ramsaur spends less than fifty percent of his time on legislative work. Of that work, at least half is done in response to specific requests from the state legislature.

Mr. Hollings: How can these men be registered as lobbyists in view of the prohibition on lobbying in the Appropriations Act?

Mr. Bradley: The so-called "Moorhead Amendment" to the appropriations statute does not prohibit legislative representation as specifically authorized by Section 1007(a)(5) of the Legal Services Corporation Act. That section permits legislative activities in three instances: when it is on behalf of an eligible client, when it is done at the request of a member or committee of the legislative body, or when it is a matter directly affecting the activities of the legal services program. Mr. Fried and Mr. Ramsaur registered as lobbyists under applicable Florida and Tennessee statutes, to carry out legislative activities authorized by Section 1007 (a)(5).

Mr. Hollings: For what purposes were these gentlemen lobbying?

Mr. Bradley: Mr. Fried represented legal services clients on the following legislative issues last year: industrial or debit insurance; in forma pauperis legislation; foster care, dependency and termination of parental rights; public guardianship; nursing and boarding homes; home energy assistance; unemployment compensation for seasonal workers; and education of children of migrant farmworkers.

Mr. Ramsaur was involved in legislative representation on the following issues: court ordered assignment of child support payments, changes in juvenile court procedures, emergency removal of children from their homes, state payments for medicaid, credit insurance, state garnishment law, interest rates on small loans, financing of the state housing development authority, and business taxes as applied to legal services practice.

Mr. Hollings: How many legal services programs have personnel registered as lobbyists?

Mr. Bradley: State lobbying registration requirements vary widely. Where state law requires registration in order to engage in legislative activities authorized by Section 1007(a)(5), legal services workers register before undertaking such activity. The Corporation does not maintain information on legal services program personnel who register under state laws.

Mr. Hollings: Please provide a listing of all Corporation funded personnel registered as lobbyists; their current salary; the amount of time spent in lobbying, and the subject of their lobbying.

Mr. Bradley: As I indicated, the Corporation does not maintain this information about individuals employed by local programs.

Of the 300 persons employed by the Corporation, three are registered as lobbyists with the Clerk of the House and the Secretary of the Senate -- myself; the director of the Corporation's Office of Government Relations, Mary Bourdette; and her deputy, Quentin Burgess. In addition, one of the Corporation's Board members, Cecilia Esquer, is technically registered, although she has not been actively involved in any legislative work for several years.

My salary is $50,113; Ms. Bourdette's is $43,640; and Mr. Burgess' is $33,668. We report all lobbying activities pursuant to federal law. The actual time allocated to legislative representation with Members of Congress is quite limited and constitutes a very small proportion of our time. All of our activities are restricted to issues related to the reauthorization of the Legal Services Corporation Act and appropriations for the Corporation.

Mr. Hollings: Is there some overall objective of the Corporation to attack the insurance industry?

Mr. Bradley: No.

Mr. Hollings: We have been supplied a copy of the Collective Bargaining Agreement between the Legal Staff Services Association and Community Action for Legal Services, Inc. of New York City. How many such agreements have been entered into by the local agencies?

Mr. Bradley: Our records indicate that there are approximately 65 collective bargaining agreements.

Mr. Hollings: What role does the Corporation play in these agreements?

Mr. Bradley: The Corporation has no role in negotiation or administration of these agreements. The Corporation has provided technical assistance in the form of labor mediators where both labor and management have agreed to such assistance.

Mr. Hollings: The New York City agreement provides for an agency shop and check off of union dues. Is that standard practice in these agreements?

Mr. Bradley: Dues check off does appear to be a standard practice in programs operating under collective bargaining agreements. Most agreements provide for either an agency, union or open shop.

Mr. Hollings: The New York City agreement provides for a 35 hour work week. Are the salaries of the personnel under this agreement on a pro-rata basis less than the local programs operating on a 40 hour week?

Mr. Bradley: As the Subcommittee knows, there is no national salary schedule for legal services program personnel. Salary schedules are established by local programs. Generally, a program looks not to legal services programs in other areas, but to prevailing wage rates for comparable positions in the community where that program operates. Congress has been particularly concerned about the discrepancy between legal services salaries and comparable public positions. While programs still do not have the resources to pay full comparability, salaries are set as far as possible in relation to other local salary scales. I would expect that the salaries for the 35-hour work week in New York would be based on prevailing rates for comparable work in that city, rather than on salaries paid by legal services programs in other parts of the country.

CORPORATION OBJECTIVES

Mr. Hollings: The Corporation has described the achievement of minimum access -- establishing a program for civil legal assistance to serve every county in America -- as a major short-term objective. The achievement of this objective, which was completed in 1980, was a major reason for LSC's budget expanding from $92 million in 1976 to $321 million for 1981 -- an increase of about 350 percent. This 1982 request for $400 million represents a 25 percent increase over the 1981 funding level. What does the Corporation perceive to be its current short-term and long-term objectives?

Mr. Bradley: The Corporation's short-term objectives, as articulated in our 1982 budget request, are to maintain the minimum access level that has been established over the past five years, to maintain and improve the quality of services provided at that level, and to increase the participation of private attorneys in the delivery of service.

The Corporation has not articulated a long-term objective that is comparable to the minimum access plan. Generally, the Board of Directors of the Corporation has discussed long-range needs to meet critical legal needs of eligible clients, through a combination of public and private resources; to maximize the impact of available resources; to diversify the delivery system; and to ensure high quality services.

Mr. Hollings: Approximately what would be the cost of accomplishing each of these objectives?

Mr. Bradley: The cost of meeting the short-term objectives would be $399 million in 1982. Costs in future years would depend upon the rate of inflation, offset by continued improvements in management and productivity, but could be estimated at approximately $450 million in 1983 and $500 million in 1984.

The Corporation does not have any estimates of costs for long-term objectives. Clearly, the full costs of meeting even the most critical legal needs of the poor, with high-quality services, is substantial. It is a cost that can be met only with a combination of federal, state, local and private resources, including very major pro bono contributions of the private bar. Progress that is being made now toward more diversified delivery systems, improvements in technology and productivity, and use of alternative means of resolving client problems will be essential to holding down the costs of providing access to justice for the poor.

NON-CORPORATION FUNDING

Mr. Hollings: LSC grantees estimate that they received, or will receive, $44 million in 1978, $40 million in 1979, $42 million in 1980 and $48 million in 1981 from non-Corporation sources.

Does LSC adjust the funding levels of grantees because of these additional funds? If not, why not?

Mr. Bradley: The Corporation has not made such adjustments. The purpose of the minimum access plan was to develop an equitable funding base for the delivery of civil legal assistance to the poor in every part of the country. Minimum access funding alone can meet only a fraction of the actual legal needs of eligible clients, and the Corporation has encouraged and assisted programs to seek other public and private funds to supplement the minimum we provide. The success of those fund-raising efforts varies substantially from one program to another, for a variety of reasons.

It would undermine the minimum access approach to adjust basic funding levels according to other sources of funding. There are additional reasons why the Corporation has rejected the idea of making such adjustments:

1. Adjusting for other funds removes the incentive of programs to seek such funds or of other agencies to award such funds.
2. With few exceptions, other sources of funds tend to be very unstable. Many are specifically awarded for short-term purposes. Funds awarded through state and local governments, and sometimes from private sources, tend to be intensely subject to political pressures. Even though the total amount of non-Corporation resources has remained relatively stable over the last several years, there have been substantial shifts in the amounts available to individual programs.
3. Many non-Corporation funds are awarded for very specific and narrow purposes, often limited to certain kinds of clients or for certain kinds of issues. They provide important targetted supplements to Corporation funds but could not replace funds available generally to provide services to clients eligible under the Legal Services Corporation Act.

EXPANSION

Mr. Hollings: During the Corporation's recently completed expansion efforts, guidelines were adopted to provide equal opportunity to groups other than LSC grantees when applying for expansion grants.

During the multi-year expansion process, how many groups other than LSC grantees applied for expansion grants?

How many of these groups received expansion grants?

Of these, how many successfully competed against an LSC grantee?

Mr. Bradley: Of the 323 legal services programs the Corporation now funds, 290 are basic field programs providing service at minimum access or above. (The balance are separate Native American or migrant programs, state support programs, and national support programs.) Of the 290 programs, 78 are new programs established during the expansion period from 1977 through 1980.

The following chart notes the number of new programs funded, by year of expansion:

1977	34
1978	21
1979	13
1980	10

During the 1980 expansion process, 55 groups other than existing Corporation grantees applied for expansion grants. Many of these new groups were competing against each other for expansion funds. In addition, 8 new groups were included in expansion grant applications from existing grantees.

Of the 55, 10 were awarded expansion grants in 1980, and four more were funded through existing grantees. Two of the 10 competed against existing grantees.

It should be noted that a number of the existing grantees that recieved expansion funds in 1980 were actually new programs established in the 1977-1979 expansion processes.

CLIENTS' UNMET NEEDS

Mr. Hollings: This request notes that many LSC grantees are forced to turn away potential clients and make choices between competing needs of eligible individuals.

Has the Corporation maintained any statistics on the number of potential clients turned away because of the lack of resources?

Mr. Bradley: The Corporation does not require its recipients to provide statistics of information about eligible clients who are turned away because of lack of resources.

Mr. Hollings: How many individuals have been turned away?

Mr. Bradley: Although we do not have national statistics on the number of clients who are turned away, the following examples are indicative of the problem:

1. New Haven Legal Assistance
   This program does keep accurate records of persons rejected for services who are otherwise eligible. In 1980, the program served 2000 poor people and was forced to reject or refer out approximately 8000 poor people. This is also one of the better funded programs in the country in LSC terms, and also receives a substantial amount of outside funding.
2. Legal Services of Southern Piedmont (Charlotte, N.C.)
   Because of resource problems, the program in consultation with the client community has been forced to stop accepting domestic cases, and the housing unit only does intake on an emergency basis. The director estimates that four eligible clients are rejected for every one that is accepted.

3. Central Texas Legal Services (Austin, Texas)
   In 1980, the program referred 625 eligible clients to the Austin Bar Association because of the program's inability to increase intake. The program accepts no domestic cases unless children are involved, rejects most eviction cases and handles no paternity cases. There is a 3 month wait for an appointment with the domestic unit and only in very limited circumstances are appointments even made. This program also receives 30% of its funding from other sources, in a city where there are 55 attorneys per poor person as compared to our 2 attorneys per poor person.
4. Community Legal Aid Society (Wilmington, Delaware)
   In 1980, the Family Law Unit was closed to intake for four months while the backlog of cases was handled. Only emergencies were accepted.
5. Camden Regional Legal Services (Camden, N.J.)
   During 1980, several units within the program (housing, domestic, etc.) stopped all intake for varying periods of time because of the high caseloads and backlog of demands.
6. Bexar County Legal Aid (San Antonio, Texas)
   There currently is a waiting list of one to three weeks for an appointment to be interviewed. The domestic unit is setting appointments 60 days in the future. In 1980, 48% of all applicants were rejected and 90% of those were eligible for service. Also the program eligibility standard is 80% of the maximum allowable by the Regulations.
7. Vermont Legal Aid
   Between 1977 and 1980, the program has been able to serve 1500 fewer clients per year. The program has gone from 23 attorneys in 1977 to 17 attorneys in 1980.

Mr. Hollings: How many grantees have had to turn potential clients away?

Mr. Bradley: Every grantee is faced with need that exceeds its capacity to provide service. I know of no legal services office which, once established and fully operating, is not forced to deny service to eligible clients, because there are not enough resources. This denial takes such forms as turning away clients at the door, establishing priorities that eliminate certain types of cases, and restricting home visits and circuit riding. The way in which programs deal with the problem varies, but the problem exists everywhere.

Mr. Hollings: Can this problem be minimized by shifting funds from programs with a relatively low demand for service to those programs with a greater demand for service?

Mr. Bradley: No. As I already indicated, demand exceeds resources in every service area.

PRIVATE ATTORNEY INVOLVEMENT

Mr. Hollings: Could the Corporation increase and support pro bono and compensated private attorney involvement in providing legal services within the program's current funding levels or with the requested increase to offset inflation?

Mr. Bradley: Yes, to a limited degree, and we would expect that this would continue to occur. Many legal services programs, working closely with state and local bar organizations and private attorneys, are continuing to seek ways to improve service delivery through the greater utilization of attorneys in private practice. It is important to recognize, however, that even pro bono efforts, properly organized, require overhead and support expenditures. At current funding levels, even with an inflation adjustment, private attorney participation would increase largely as an alternative rather than a supplement to existing staff attorney delivery. In some communities, there may be legitimate programmatic reasons to do so. In general, however, the results of the Corporation's Delivery Systems Study show that nothing would be gained either in cost savings or in quality improvement, by arbitrarily substituting one delivery approach for another.

Mr. Hollings: How did the Corporation determine $30 million as the amount needed to support pro bono and compensated private attorney involvement?

Mr. Bradley: The $30 million requested for private bar involvement was determined by evaluating the overall budget for the legal services to the poor and projecting a substantial portion thereof for increased private bar participation.

Mr. Hollings: What is the value of pro bono services currently being provided to LSC grantees?

Mr. Bradley: We have no reliable way to set a dollar value for the pro bono services that private attorneys provide through arrangements with Corporation grantees. The figure is clearly substantial. At least 96 of our grantees have organized pro bono programs that provide significant levels of service to clients. Many other programs have less formal arrangements for referring cases to private attorneys who handle them on an uncompensated basis.

Mr. Hollings: What amount of Corporation funds are currently being used for compensated private attorney involvement?

Mr. Bradley: The Corporation awards $4.3 million to independent judicare programs. In addition, staff attorney programs reported nearly $1 million in payments last year to private attorneys in judicare components and through contract arrangements. Corporation grantees used an additional estimated $1 million in non-Corporation funds to pay for private attorney participation. These figures do not include the costs of managing and supporting pro bono activities.

NATIONAL AND STATE SUPPORT CENTERS

Mr. Hollings: The Corporation has national support centers, which are responsible for developing expertise in areas of substantive law such as employment, welfare, consumer, and housing, and in areas of special legal problems of particular groups of poor people such as the elderly, youth and migrants.

What formal procedures has the Corporation established to assure itself that the efforts of these national support centers are not duplicative?

Mr. Bradley: The Corporation has established an extensive review and evaluation process to oversee the seventeen national support centers and prevent duplication among centers. First, each center must submit a detailed workplan each year which is carefully reviewed before funding decisions are made. Second, the centers are periodically evaluated with site visits to each center. One of the specific tasks of each team and a purpose of the overall evaluation is to determine whether any duplication of effort is occurring and to make appropriate recommendations. Third, each center must submit semi-annual reports to the Corporation. These reports discuss all activities of the centers, and detail how they are carrying out the workplans previously submitted.

The Corporation has also examined the national support centers in two extensive studies. In both studies, careful examination was made of possible duplicative efforts.

Mr. Hollings: Without such procedures, could the problem of housing for the elderly be addressed by both the center for housing and the center for the elderly? Could the problem of unemployment amongst the youth fall under the jurisdication of both the center for employment and the center for youth?

Mr. Bradley: Of course, problems which overlap among centers could be addressed by both centers. This has not been the actual practice, however. Support centers communicate frequently among themselves and divide up the potentially overlapping areas. The demands for support center assistance greatly exceed the resources available to meet them and each center must make difficult resource allocation decisions. They do not have the luxury of participating in duplicative efforts.

Mr. Hollings: What is the rationale for having national support centers which address both poverty issues and target populations? What is the rationale of this dual approach to providing national support?

Mr. Bradley: We have not created a dual approach to national support. Instead we have established centers that target on special legal problems faced by particular segments of our client population. Some of those problems are best addressed and support provided by targetting on a particular, unique subgroup of the poor; most are addressed by focussing on the substantive issues affecting all subgroups. To address such problems requires both specialized expertise and a sensitivity to and awareness of the particular cultural and ethnic characteristics of the particular population. For example, Native Americans have unique legal problems that differ from other segments of the poverty population. Welfare benefits come through a BIA welfare program; health care is provided through special programs; Indians may sue or be sued in tribal courts. A center that focusses solely on such problems is the only feasible means of assuring adequate support and assistance. The situation is similar for other segments of the population such as the elderly, migrant farmworkers, veterans and youth.

However, most poor people's problems are best addressed and support provided by focussing on the actual legal issues and not on the unique interests of the subgroup of the poor. That is why most support centers focus on poverty issues and not target groups.

Mr. Hollings: Many grantees have established special units which specialize in the same issues of law or target populations covered by national support centers. Also many of the state support centers develop expertise in the same areas.

How does the Corporation assure itself that the efforts of the grantees' special units, state support centers, and national support centers are not duplicative?

Mr. Bradley: We have no reason to believe that duplication exists among the three types of programs or units and no study or examination of legal services has ever suggested that it does. We examined national and state support in a comprehensive study in 1978 and found no evidence of duplication. That study as well as the 1007(h) study also looked at the activities of special units.

The three programmatic components focus on different levels of problems and have different functional responsibilities. National support focusses on national developments and developments across states. State support focusses on state level issues and information sharing and coordination among staff within states. State support staff undertake representation only if requested to do so by local program staff within the state, or if the issues or type of advocacy cannot be undertaken by staff from local programs.

The Corporation has been careful to prevent duplication from arising. First, national support centers are precluded from undertaking representation that could be undertaken by state or local programs unless local or state programs specifically request the national center's participation. Second, states have been required to carefully review all aspects of advocacy within the state and plan what will be done to assure that needs are addressed and no duplication occurs. Third, funding for national support is done through a process that involves review of national support plans by regional offices, state support and local program staff, and staff at the Washington office responsible for state support and local funding. Likewise, state support funding decisions are made by staff in Washington which includes those responsible for national support.

Mr. Hollings: The $5.1 million increase for state support is, in part, for training and information sharing.

How would training and information sharing provided by the State support centers differ from the training and information functions of the Office of Program Support's training units and the National Clearinghouse for Legal Services?

Mr. Bradley: One of the principal functions of state support is to share information on state developments among program staff, clients and private lawyers involved in delivering legal services. Such developments consist of state case law, and state and local administrative and legislative developments. Information sharing may also consist of community education efforts, approaches to delivery of legal services and other state developments affecting legal services program staff and clients within the state.

The National Clearinghouse for Legal Services does not and can not focus on critical issues affecting each state. Instead, it focusses on issues which have relevance to the development of the law generally and on national legislative and administrative developments. The Clearinghouse Review does not generally report state and local legislative and administrative developments, focus on cases purely of local or state concern, nor discuss delivery developments or other activities that would be relevant only to one state or local area.

A second principal function of state support is to undertake training and other activities to improve the quality of advocacy and to effect the professional growth and retention of legal services staff. The funds for state support will be used for two purposes in reference to training. First, they will develop an effective training capacity and staff within each state. Second, they will provide resources, in addition to those received from OPS, for undertaking training on state law developments and state procedure.

The Office of Program Support is shifting its primary training effort from national events to funding state and local training events. It will also cease being the primary deliverer of training and instead become a developer of training for delivery on a state level. OPS will, however, continue to carry out national training events and develop training materials on national issues and will continue to use training as a principal means of introducing new areas of poverty law to legal services staff.

Thus, the functions of OPS and state support projects are different and non-duplicative. OPS delivers national training, develops training packages for delivery on state and local levels, and funds specific state training. State support projects are and will become the primary deliverer of training within each state and have the responsibility for assuring that staff from all programs within the state are effectively trained on practice and procedure within the state, on advocacy skills and on substantive law issues.

Mr. Hollings: Approximately what percentage of the state support centers' time is spent on advocacy related activities?

Mr. Bradley: It is difficult to make that approximation because there are a variety of different types of state support units and they undertake many varied activities. There are only six actual state support centers.

Our best guess is that approximately 30% of state support activity is directed to advocacy related activity. The remainder is directed principally to training, communication of information about state and local poverty law developments, coordination among local program staff, the production and distribution of state practice manuals and materials and the operation of libraries and pleading and brief banks.

INFORMATION SYSTEMS

Mr. Hollings: The Case Service Reporting system was scheduled to be fully implemented in 1980 and was designed to furnish information on the amounts and types of services provided by grantees to clients.

Will attorney resources expended by projects be related to the types of services provided to the client community? If not, why?

Mr. Bradley: Yes. Because the Case Service Reports provide comparable data on all programs, LSC will be able to review the types and level of services provided by individual grantees using available resources.

Mr. Hollings: If attorney time will not be matched with the types of cases handled, what alternative methods will LSC use to assure itself that individual grantees are devoting their resources to the most prevalent needs of the poor in the community?

Mr. Bradley: LSC reviews the priority setting procedures used by grantees to determine whether the client community needs are adequately reviewed and addressed. The Case Service Reports will provide valuable information on the clients served and the types of services provided. Comparison of the community needs, program priorities and services will determine whether the needs of the poor are being adequately addressed.

Mr. Hollings: Have all grantees complied with the reporting requirements of this information system?

Mr. Bradley: Yes. Essentially all grantees have complied with the CSR requirements. (A few programs have experienced reporting delays due to technical difficulties associated with modification of their internal information systems.)

Mr. Hollings: Are the national and state support centers included in this information system?

Mr. Bradley: The national and state support centers provide the Corporation with activity reports which, by necessity, differ from the format of the CSR in order to reflect the full range of their activities. The national support centers, for example, submit both annual workplans and semi-annual activity reports. Programs engaged in state support activities are monitored closely.

Mr. Hollings: Have they provided the required information? If not, why not?

Mr. Bradley: Yes

NONDEPARTMENTAL WITNESSES

STATEMENTS OF:

HOWARD PHILLIPS, NATIONAL DIRECTOR, THE CONSERVATIVE CAUCUS, INC.

PHYLLIS SCHLAFLY, PRESIDENT OF EAGLE FORUM

Senator WEICKER. We will now hear from outside witnesses on the subject of the Legal Services Corporation. Our first panel will consist of Mr. Howard Phillips from the Conservative Caucus and Mrs. Phyllis Schlafly, president of Eagle Forum. Proceed in any way you want.

I understand the staff has instructed the outside witnesses who appeared here yesterday to abide by the 5-minute rule.

Mr. PHILLIPS. Thank you, Senator. I would appreciate your indulgence in considering for addition to the record a copy of this transcript of a tape recording which was recorded at a conference in San Juan, Puerto Rico shortly after the election at a legislative seminar for Legal Services attorneys. In the transcript it is clear that at least some Legal Services attorneys have been extremely active in some forms of lobbying and organizing lobbying to which I think most reasonable people would object.

Senator WEICKER. That will be included in the record.

[The information follows:]

LEGISLATIVE ADVOCACY

SAN JUAN, PUERTO RICO

JUNE GILL:

I am the legislative advocate from the four legal services programs of the state of Colorado, and on the panel this morning ... on my far left is Barry Schwartz who is from FRAC in Washington, D.C., Greg Wald who is the Colorado State Public Defender, and the missing member is Chet June, who is making his dramatic appearance with song and dance coming down the aisle ... Chet June from the Illinois State Support Center. Listed on your program is John Asher and I want to apologize for John's absence, but my group is cheap and they would only pay for one of us to come and I won. So, John is back in Denver holding the fort down.

Chet, we have established that there are no defenders here which means that Greg is going to describe his skills to legal services people. That is not very far fetched because Greg is a really super lobbyist at the Colorado state capitol. I think that we all can learn some thing from him and his approach to it. Greg is number one on the agenda and then we are going to go with Chet next, myself, and then Barry is going to close us up this morning. We will have time for questions after each person has spoken, so please feel free to ask questions.

GREG WALD:

My name is Greg Wald. In Colorado we have a state-wide public defender program and so that means that I have to be over in the legislature not only on legislation but also on my budget, which is also decided by the legislature.

Colorado is a conservative state and traditionally has been governed in the legislature by a binding caucus arrangement where the party in power, the Republicans always, decide budgetary matters and some legislative matters in caucus, bind their members, and then come out and roll it through the legislature. So, the liberals don't help you a bit; you are forced to go into the lion's den with the GOP caucus and try to persuade them. So, it is kind of a hard place to do business.

I have been head of the program in Colorado for a couple of years and the situation that existed when I came in was one where the legislature had been pretty well ignored and they were after our program. I don't think any program is more unpopular in Colorado as a matter of general principle than criminal defense. Most of the people in the Republican caucusses consider it almost unAmerican to defend criminals and delight in telling you that. So, the real problem you face as a defender in that situation is trying to go into this lion's den and find out a way of persuading them to vote for your budget.

I have been a trial lawyer most of my life and I think the popular attitude is that trial lawyers make lousy lobbyists. I spent the first year proving that to be absolutely right. I think I made every mistake in the book trying to work with these people that first year. And, they killed us. They really chopped us apart in the House Republican Caucus. It is a situation where you go in ... It is an open caucus. It is open to the public. You go in there and watch these people just meat ax your budget and you can't talk. You just stand there and they are smirking at you. All the time they are pulling positions and money and ruining your program. That is exactly what they did the first year.

The approach that I used the first year was the kind of the angry, self-righteous, dominating trial lawyer coming there and educating them and lecturing them on the Sixth Amendment. Goddammit, the Sixth Amendment is there. The court says in Gideon that you have to provide lawyers. We are the outfit. Now, shape up. You know, and they really took it out on me.

I think after that first year there was an obvious need for reassessment and the thing that I decided was true was that the same revolution that really caught up on trial lawyers in the last five years applied to the legislature. Trial lawyers, especially criminal defense lawyers, used to go into the court and use this angry, dominating, self-righteous approach; try to make the jury feel little; you feel big standing way up there, and the jurors used to take it out on us time after time after time. Now most of the trial skills that are being taught are how to talk to people in voir dire, communicate with them, get them to like you, get them to want to vote for you and for your client. The same way with working with judges. More and more training we are doing is how to win over the conservative judge. Not take him on, but win him over. The same things are being taught in the art of negotiation. A lot of old style defenders used to go to the DA's office and, you know, if you didn't get the deal you would call him a Goddamn Nazi and stomp out, burn all the bridges, go to trial for months and months, one after another, until one of you wore down. The new style is to go over and use counseling techniques trying to find out what is on the district attorney's mind, why they are bothered about the case, what it is they think would benefit society by throwing this person in the joint, and then once you know that trying to persuade around it.

The same revolution is taking place in management. The authoritarian style of management is being discarded; motivational style is replacing it. The basic reason the Japanese build better cars than we do is that they have learned better than we how to motivate people ... using the motivational approach; not the "big stick" authoritarian approach.

The second year that was the decision that I made in trying to reach this legislature, and I think it is really the psychological approach that works best. I think in terms of the fiscal lobbying I do all of it. I don't send my administrative officer, chief deputy, office head ... nobody else. I do all the fiscal lobbying. I think the reason is that it carries an impact with legislatures if you make time out of your day to go over and talk to them about the funding. I think it impresses them. They don't see that much of it. The second reason is that I honestly believe that if everything else is neutral they will cut the public defender program every time they meet in the caucus and only if they know you by your first name and only if you sat around and talked ... You know, we have got a lot of cowboys and ranchers and stuff like that in the legislature and if you sit around and have coffee with them and talk about how the hay crop is this year you are going to be a hell of a lot better off in that causus. When they look up and they are conducting that vote and you are standing there and you are a friend that is the whole difference. So, at least in Colorado, at least in our situation, I have done all the lobbying.

The general approach has been to listen very carefully to these conservative people's thinking and after listening for a few months one thing started coming through ... two things, really ... they wanted to do it cheap and they hated plea bargaining. Those were the two things that dominated their thinking the most. So, we just drew up a little fact sheet for them which showed that first of all the Constitution did require a defense lawyer in the courtroom. We were lucky in a way in that the federal courts had intervened in the correction system in Colorado last year and you could talk to them about look, I don't want to be in the same position that Ricketts is over in corrections with the federal courts running my program; I want local control. I want to run that program. The state should run that program. And, you know, they really sympathized with us. They didn't want the courts running any part of the government either.

The second thing we pointed out was that it is half as expense to have a public defender in the courtroom as it is to have a private lawyer and we had the facts and figures showing that they were saving a lot of money with our program and that it would be fiscally irresponsible to destroy our program and that it made good sense to fund it well.

The third thing is we talked a lot about plea bargaining. Everytime they would mention it they would say, you know, you Goddamn elitist striped-pants lawyers going back in a closed room and smoking cigarettes and hammering out the public's business and then coming out and giving these people probation and stuff like that. They were really angry about it. My response was, you know, I hate it too. I am a trial lawyer. My people are trial lawyers. We want to try cases. But, let's look at your own jurisdiction. The district attorney has got 10 district attorneys and we have got one public defender. That means absolutely 90 percent of those cases are going to have to be settled in the backroom of the courthouse. Give us another lawyer and we will double the trial rate. Give us three lawyers and we will triple. But, you have really got to pay if you don't want plea bargaining. They bought it. They really felt strongly about that and suddenly saw us as a way to solve that problem instead of the reason why it was happening.

We tried to convince them that we had already found ways to save money for the state. In our appellate division one of the silk stocking firms in Denver agreed to handle essentially one lawyer's case load in appellate work for free because it gave their lawyers experience in the appellate courts, got them a chance to argue and brief, something they wouldn't get otherwise and, of course, it gave us some benefits too. We let them know that. We let them know it not after they cut our budget but as a kind of a we weren't reacting to budget cutting measures by them; we were going out and doing it ourselves.

The other thing that happened out there last year was that we did confront them. After they cut the budget in the 79-80 fiscal year we pulled out of cases on a massive scale. We took the NLADA staffing guidelines, applied them to our offices where we were over standard, we pulled out of enough cases to bring it down to standard and forced the courts to appoint private lawyers in those cases. When we did it we didn't hold a press conference. There were a lot of people advising us to. Hold a press conference, tell the public how they failed to meet their responsibilities under the Sixth Amendment and the Constitution, and how it is going to cost the taxpayers a lot more money because private lawyers are handling a case and stuff like that. We rejected that approach because then they would have to hold their press conference, right, and they would have to say something nasty about us and all of a sudden we would be fighting and it doesn't do any good. So, we just pulled out of the cases, sent a very apologetic letter to the Joint Budget Committee and told them we are sorry but we do have this constitutional responsibility that I as a lawyer cannot ignore, cited the disciplinary rules which require you not to accept more cases than you can competently handle, and left it at that. Didn't ask for any reply, didn't ask for a meeting or anything else. It cost them $500,000 by just an administrative decision, but didn't make a big stink about it. Then in the budget hearings the following year they tried to pick a fight. Some of the conservatives on the budget committee basically saying to me something like ... Okay, you know, the teachers come in here and they tell us they can only teach 25 pupils in a classroom and we budget them for 35 and what do they do; they go out and teach 35 kids, and the probation officers come in here and say they can only handle 70 people and we budget them for 100 and what do they do; they go out and handle 100 clients, and you, you Son-of-a-Bitch, you come in here and say you can only close 150 cases. We budget you for 170 and what do you do; you go out and handle 150. Now, who the hell is the boss here? Inviting us to fight. Again, using psychology from the courtroom, the principle of reflected emotion. If somebody is jumping in your face and angry and you jump back at him you are going to have a fight. If somebody is jumping in your face and you remain calm and cool they can't stay angry forever. It is absolute principle of psychology. That is what we used in the budget. You know, that was a hard decision and I didn't really like being placed in that position as a professional either because I felt like I wasn't doing my job and I agreed with them. It was a really unfortunate thing to happen. They vent their anger and try to fight and you are sitting there saying that and pretty soon they stop fighting and you had made the point that unfortunately we are just a lot different. The Sixth Amendment governs my actions, the Code of Professional Ethics does and I am really sorry. The battle really stopped there and they never fought about it for the rest of the session. There was only one person fighting.

We also did a lot of fiscal coalition building last year. Found that the district attorneys were willing to write letters for us saying we built up these Goddamn fancy staffs; you know, 25 trial lawyers, 32 investigators, 17 victim witness people, and whatever the hell else they have and here are three public defenders over there and, you know, we are really frustrated. We have got this big army and we have got no one to fight. And they did; they wrote an awful lot of letters and the did a lot of direct lobbying. The judges were willing to write letters and basically what we asked them to say, and which they did say, was, you know, public defenders really help our courtroom. When we have to rely on inexperienced private counsel they have to come in and file ridiculous motions, they don't know what cases to try and what cases to settle, they slow down the courts, but these guys are well trained and they do a good job. That was basically it. Didn't really ask them to get into the battle of are there enough of us; just got them to say they do a good job in the courtroom, they are efficient, they are not nasty people. We used corrections on a couple of key legislators. To just go over there and quietly say, you know, we have a prison system that is full and there is a federal judge placing limits on it and you know who are in the best position to stop or control the flow of people into the prison it is those crazy public defenders that you hate so much. If they are doing a good job they slow down the flow of people into the system and it is going to help us. It really changed a couple of legislators positions. We used sheriffs. A lot of sheriffs across the state have full county jails and they are also under court orders and we had them contact troublesome legislators where we had a good relationship with a local sheriff. Had him contact the legislator and tell them ... I have got a full jail and these public defenders, there aren't enough of them to get over here and get these people out. We have got some people on short shacks and hitchhiking and stuff like that that are in jail, shouldn't be there, public defenders could help get them out, help them ... and that helped. The police have some pretty effective lobbyists up there and, you know, the whole business of trial law is really strange. A lot of time the cops have a lot more rapport with the defense than they do with the prosecution. The prosecutor is kind of lazy and laid back and when they get beat by us they, you know, they respect it. They were willing to talk to a couple of legislators and say these guys aren't bad. They are fair fighters. They are okay. The county commissioners ... We were only lucky enough to get one or two of them. But, the same principle. Especially in the energy impact areas where they were ... In Colorado there is oil shale and stuff like that impacting our mountains and they are always up at the legislator talking about gee, we need more schools, we need more police, we need more so-and-so and we just got them to add one position ... we need more public defenders. So that suddenly it wasn't us against the establishment locally, but they were coming and asking for us to help them solve some of the problems they had of crime in their energy impacted areas. So, that was the kind of stuff we did last year that worked fairly well.

In the legislative stuff I have just really got a couple of things to say in terms of how we try to handle it in Colorado. In the public defender business it is usually us reacting to something the DAs or police are proposing. It is usually bigger sentences for some really disgusting crime. Public defenders are trying to get this TV game show going called "That is Disgusting", you know, where public defenders are invited to tell about their most disgusting sexual assault cases. Fran Tarkenton can sit around and say "Geez, that is really disgusting."

(Laughter)

Well, that is the kind of stuff they hit you with in the legislature. Trying to enhance the penalties for using little girls in these pornographic movies, you know. They even kill some of them. You know, that is a battle you can't win. They have the last session tried to increase the penalties for beating up on old ladies, old men; crimes against the elderly. We don't fight on those issues. We just don't fight. I think it is a lot like trial law where every trial you go into the DA and the police are asking come over here and fight on Hill 42, it would be a lot of fun and if you go over to Hill 42 you are one dead cookie and your plan is to stay right there on Route 66 and no matter who is asking you to go over to Hill 42 you are going there because it is the only place you can win. The same way over there. Our approach has been on head shops, kiddie porn, crimes against the elderly and that stuff ... when legislators ask us we just say, you know, never for increasing penalties but that is up to you guys, I don't know, and then just avoiding it, avoiding those fights. When the big fights come on sentencing, changing the criminal code from top to bottom, these kind of issues, we try to get those into blue ribbon committees and out of the legislators' hands at the start so that a big blue ribbon committee can come back and tell them whether determinate sentencing will work, or come back and tell them how to redraft some of their criminal code violations. We have been fairly successful at that. The main advantage that we have seen in that area is that we seen in that area is that we aren't outnumbered there. Over at the legislature, half those legislators ... If I am on one side and the DA representative is on the other that is all they need to know. You know, the DA is the good guy and I am the bad guy so they are going to vote that way. In these blue ribbon committees basically the governor and the legislature have appointed equal numbers of representatives from the defense and prosecution and so suddenly you are equal. They appoint the better judges in the state and they are generally defense oriented. They appoint people from corrections. People from corrections are generally defense oriented we have found. They appointed some legislators and usually lawyers who are generally more accepting of our position than the others. So, that is the way we have gone on substantive legislation. If we can't get it into a blue ribbon committee we are in trouble. We usually end up on the drafting committee also of these blue ribbon committees. General principles decided by a committee of a whole and then you go back and draft a bunch of stuff ... legislation that ... the little details that make all the difference. Like when does good time vest, if ever. When our sentencing bill was rewritten we went from a no vesting good time to one that vested every quarter just because we were on the drafting committee. Question that came up, went through the legislature with no questions.

That is all the comments I have. If there are any questions I would be happy to answer them.

(Question inaudible)

GREG WALD:

To some extent these have overlapped a little bit in the past. That reminds me of one thing in terms of working coalitions. Jane on the civil side, myself, the ACLU, we are trying to get together a working coalition this year where we kind of share each other's knowledge about particular legislators, strategies, and that kind of stuff. Hopefully, next session we are going to be doing that kind of effort.

In the civil area the only thing that we have gotten involved in to some extent are civil commitment laws. We had a rash last year of killings in Colorado by people who were obviously mentally ill and who had not been adequately treated by the civil commitment system. All kinds of questions of whether there should be statutory change, whether there needed to be a change in approach by a Department of Institutions; that kind of stuff, and we did get involved. In a way legal services and ourself were kind of in a different position. We were asking for a somewhat tougher approach on civil commitments because we had had like 10 people commit murder in the state, and who weren't murderers. They had just been thrown out by the Department of Institutions without medication and with really florid paranoid problems. We felt that there had to be a more aggressive approach to civil commitment; legal services didn't really agree with us on that. Amazingly enough, legal services appears to be winning. So ... But we really don't care that much.

__________________:

You are presenting an unpopular program by your own words. Asking in terms of the kind of profile you maintain, do you keep a high profile or do you try to work with other groups?

GREG WALD:

Keep a very high profile fiscally. Keep a very low profile on the legislation. You know, if there is ... If the legislature is passing a law against head shops ... First of all we really don't ... That is business law. But the head shop people are going to be over there with their lobbyists against it anyway and if they are going to win they are going to win that way and we stay away from that stuff with a 10-foot pole. On the big issues like sentencing, pretty high profile. Basically I found that if we play it that way the legislators will come to you for advice. Even some people who aren't particularly liberal. If you are lobbying them on the fiscal side and you are convincing them that you are really an important part of the criminal justice system, not someone in there just maw-mawing the whole system, they do start coming to you and talking to you and getting some of your ideas and really thinking about some of your suggestions. Again, we use ... We try to hit them in the jugular ... the fiscal approach. Gee, if you want to increase sentences here are the figures on the prison. They are 90 percent full. Corrections experts say they can only go to 93 percent. So, gosh, if you are going to do this make sure that you appropriate another $20 million for a new prison to keep the federal judges from intervening in your court system. And you aren't talking about soft or hard-on criminals. You are talking about the mean federal courts coming in and running their outfit and you are talking about money. So that is basically the way we approach that.

____________________:

Rather than avoiding those legislators who philosophically agree with you I think I heard you saying that you find a way to approach them but in no event do you avoid them.

GREG WALD:

No event. The first year when we got cut, the guy who led that effort was a guy named Cliff Dodge, and after ... he is so crazy. Here is the way my discussion went with him after this caucus. I said, "Geez, Cliff, I never knew you felt like my program was overfunded." He said, "That is not the point, Wald." I said, "What is the point?" He said, "The point is that paying money for criminal defense lawyers is like pouring money down a fucking rat hole. That is the point." I said, "You know the Sixth Amendment of the Constitution says that he has to have it." He said, "The Constitution is not perfect. That is why it has been amended so Goddamn many times." I said, "But the Sixth Amendment hasn't been amended out. It is still there." Finally I got angry with him and I said, "Goddamn it, would you rather have a justice system like they have got over in Iran where you know a trial has been held and a verdict rendered by the sound of gunshots in the middle of the night?" He said, "Not a bad idea, Goddamn it. Maybe I will propose it." Here is a crazy guy; right? I spent the whole summer, you know, trying to figure out what to do with it.

You had a lot of choices. Spread that story around the capitol and hope people get outraged, but boy would he be pissed, right? Ignore him? But he would be back next year. You should have seen the look on his face as they were chopping our budget apart. Just smug and happy, poking people, looking at me. It was like kindergarten. An incredible sight. So, the next year I used to make a point of every time going up to him and saying, "Dodge, you hard-ass, what are you going to do to me this year?" and laughing about it. Pretty soon he started laughing about it. Finally, just before the caucus convened I went back and I said, "I have been asking you all year what you are going to do to me this year. I have lost sleep week after week wondering. Come on, why don't you tell me?" He said, "Oh, I am not going to do anything to you this year. Get out of here, you pest." and it was over with. Again, I think solely, almost completely on the basis of we started joking and we started chuckling a little bit and he couldn't hate me anymore and so he couldn't hate my program anymore and he couldn't look up and kind of laugh as my face was getting red as they were cutting those positions out of my budget. I really think you have got to take them head on, not get too serious. If they are crazy like Cliff just recognize it and pretend like you enjoy it.

________________:

In Colorado we just elected Cliff Dodge ... from the House. So, we have another four years to deal with him.

________________:

Let's assume that Jane came to you and said that she wanted you to testify before a Welfare Committee and (remainder of comment inaudible)

GREG WALD;

I don't know what I would do on that. I think ... The political part of me says, "Why get into it?". The old legal services lawyer in me, and I was with legal services, says, "Get into it." I think politically it wouldn't be a wise move for me. Our basic approach in selling our program is out in those courts to be, you know, crazy as hell. We hire crazy people. Most of our people make Cliff Dodge look reasonable, but we are on the other side. But over in the legislature to sell ourselves directly and indirectly as a part, an essential part, of the criminal justice system; the sheriffs, the police, the DAs, the judges, to the extent that we can, telling them that and that we are nonpolitical; that we are just a working part of that system. That is the basic political approach.

JUNE GILL:

Thank you, Greg. Greg wants to go and hear how to defend battered women in homicide cases. So ... Thank you, Greg. I appreciate your coming.

The next person on the agenda this morning is Chet June. He is head of the State Legislative Support Unit in Springfield, Illinois and has been in that for four years.

CHET JUNE:

I am going to use the podium because I stay awake better that way. I was just looking around the audience. I don't know if I am going to be able to tell you anything that you already haven't either heard me say or don't already know yourself. I sort of feel like I am on the Carson show with all the guests leaving. Here you two can go. I mean if you haven't heard it by now ...

I would like to point out several things that I would like to say that are available so maybe you don't have to reinvent the wheel. This is our prapoganda sheet from our office. A lot of people ... What is the Legislative Support Center? I mean my mother finally understands what I do now. My father still wonders when I am going to really start practicing law. But, we have developed this brochure to explain that primarily to my associate, Farley Peters', parents and my parents. It also is very good for clients. The other thing is we developed a ... This is our handy-dandy little manual on public interest lobbying in Illinois. It is copyrighted. It is available from the Library of Congress in braille and on tape. It is free to any legal services program. We do ask you maybe sometimes to help pay postage. We are in our third printing. Our object when we started the office was ... both Julie Hammos, my first associate, and I had been involved in legal services since law school so we knew that someday if our program was as successful as we hoped it would be it would probably self destruct and we wanted to leave something behind us. Something left for posterity. I have got a few of these that I brought with me; however, they are available through our office and our office address is on these little red and gray brochures. It can be adapted to any state and it is something that we use on our traveling road show and clients find it very helpful when they come to Springfield to lobby because it sets out who is where and who to contact about what and everything we wish we would have known in 1976 when we opened up our doors.

I think maybe most of you heard my introduction. I am the white Anglo-Saxon protestant Republican, white hunky, in the office. My associate, Farley Peters, is the radical feminist Democrat who used to work on Democratic campaigns. Our paralegal secretary is John Arnold who is a former Marine enlistee who is now a Marxist. He sort of looks like Mapps used to with long hair and a long beard, except Mapps got his hair cut. Our other new associate is J. Lee Pierce who is an Iowa hog farmer. She used to be a girl's basketball star from Indianola, Iowa and she is now our other secretary, paralegal. So, all precincts are heard from in our office.

I would like to sort of start out the morning with ... This is Katz's Law restated. Katz is a chair ... He is an Ariodite. He is sort of the Adlai Stevenson of the Illinois House at this point. He has stated, and he does this with frequent regularity, Illinois legislatures will act rationally only when all other possibilities have been completely exhausted, and If you go with that premise you can deal with your state legislature. Let me just go in ... I would like to cover two things, or three. The legal basis for our lobbying and why you should be up front about it, the IRS ... just briefly hit some IRS things you might be interested in, and then go into some of how we set our priorities and how we get clients involved in what is going on.

First, the Legal Services Corporation acts as thou shalt not lobby except in three instances:

(1) Where there is a client who requests and needs this service.

(2) Where a legislative unit requests this service, or ...

(3) Where it directly effects your own program.

I will get into the priority setting and how clients request this from us.

Two, in many instances building our credibility we now receive ... This is our fourth year in operation ... Legislators request our help a lot.

The third point is where it affects your own program and that is happening right now. I think you are all justified in lobbying for the Legal Services Corporation.

Access and knowledge are the lobbyist's two most most important things. I am sure you are all aware of that. If you start out small ... I won't go into all the points. I mean there are tons of things I would love to say, but I think we have put them all in the manual. If you start out small, take off small bites, eventually you can begin to chew larger things.

The first year we were in operation in 1976, September of 76, we did not take on ... Our first goal was not to reorganize the whole Landlord Tenant Act. However, this is our fourth year and we have come in with our, what the realtors call our Tenant/Tenant Bill and we call theirs the Landlord/Landlord Bill and maybe somehow we will be able to work out a Landlord/Tenant Bill even though the Illinois legislature has gone, the House is Republican where it used to be Democratic, but luckily there is a basis for negotiation there. There is only three votes. They are ahead.

IRS 501 C-3 organizations. With the new tax law of 1976 some 501 C-3 organizations can lobby, and I would say most legal services corporations are within that purview. We set it out on page 57 in our handy-dandy little manual. We have a discussion of the IRS rules generally and what you should be aware of. Under the old law there was a case decision ... Well, it said a nonprofit charitable ... group shall not be substantially involved in legislative activities. The substantial test by the 1956 case decision said that that was a five percent on money. A 1974 case said no, you can't just look at the money. You have to also look at the time and the effort. To get around this the 76 Act set up specific percentages. If you elect to come under the purview of the new regulations, if we elect to come under the new section you can use 20 percent of your first $500,000, and, of course, we all have at least that much, can be used for lobbying. Fifteen percent of the second $500,000 can be used and 10 percent of the third $500,000 and then it goes up, but you can't spend more than a million dollars in any one year and direct lobbying is really getting out there and rounding up the votes. However, you have to elect under a form, it is IRS Form 5768, and before you get into it there is a real good discussion that I picked up and it says "Not for General Distribution" but everybody has been distributing it. It is a new analysis by the Washington law firm of Cheatham and Buke ... Is that it? ... on NLADA and how they can elect to come under it. It has got some forms to keep. If you are going to do lobbying how you can report this if IRS asks you and how to keep your funds separate. For the most part legal services corporations, if they have not, and if you are doing lobbying, you should talk to your corporate business manager or your comptroller or whoever, your tax people, and seriously consider electing because if you don't, if you don't elect you go back to the old substantial test and if in fact you have been using more money than you should and you are caught on it you will get a little penalty and it is easier to just elect under it and keep the records that are needed rather than go through the penalty stage. I won't go into anymore detail. I think this memorandum does it very well and if you have any questions I can refer you to our corporate business manager who just put it all together and has done it in Illinois.

Yes, a question?

(Question inaudible)

CHET JUNE:

I don't ... Bob, where did you get that?

(Answer inaudible)

CHET JUNE:

Oh, yes. Thank you. Your state probably has a Lobbyist Disclosure Act. I was senate majority counsel in the State of Iowa and then I also went and lobbied for legal services afterwards and we had a very strict lobbying stand. We had to fill out something on every issue that we were on. In Illinois we have a rather loose lobbying law and you are sort of required to file, but you are not sort of required to file. I have always chosen to file; to be right up front and say I am a lobbyist and I am an attorney lobbying for my clients just like any other attorney or I am a lobbyist just like any other lobbyist for their clients. I find it is not a problem and it is usually a lot easier to be registered. However, I would ...

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* * * *

(Beg of Tape 16, Side 1/2b)

CHET JUNE:

... good office systems. So, we had a ballot of three ... Last year we had a ballot of 315 issues covering all sorts of areas ... consumer welfare ... any legal services topic you can think of we had a ballot. We sent it out and said, "Select your top ten. This is the top ten survey." and we gave very short deadlines. The ballot was such that it folded up and it was a mailer. It was already stamped, it was already preaddressed. All the person had to do was fill out, you know, what are the numbers, you know, we like Issue 126, we like Issue Number 123, put in the priority and mail it back to us. We got an 85 percent return rate out of our mailing list. Our mailing list last year was about 1500 and we got about 800 ballots back and John Arnold, my secretary paralegal, went crazy.

Paul?

_______________:

Do you mind if I interrupt you?

CHET JUNE:

No, not at all.

_______________:

To get in perspective, you said there were 500 people who attended. There were clients, there were legal services people ...

CHET JUNE:

Right.

_______________:

Were there other people from the community who you could turn to, support type people but who were not directly involved?

CHET JUNE:

We had United Way people there. Is that what you mean?

_______________:

Yeah, others beyond clients ...

CHET JUNE:

Oh, sure. We had ... It was just sort of open to the general public, but we wanted to know what the relationship was to legal services.

_______________:

Your mailing was to who?

CHET JUNE:

Our mailing was to our entire mailing list which includes clients, includes civic groups, includes community groups, includes client groups, some churches ... It is a very broad spectrum mailing list. On the ballot we wanted to know who was requesting it. Are you a client, are you a community group, are you an attorney ... what is your relationship? So, when we got these ballots back we figured out what our top ten were numerically and then staff used its political savy and we made this quite clear up front how we were going to evaluate this and then we ran it by not only the executive directors of the five legal services programs in Illinois but also the president of the State Clients Council and the Chicago Clients Council. We gave a two-week comment period. After that was through we knew what our top ten issues were, we knew where the support was, we knew we could tell you exactly who requested it and if they were a client and we also had a network. So, we drafted the bill during December. We got all this through by around mid-November. We drafted proposed legislation by December and then could send it back to that network and say here is what we have come up with based on what we heard you saying; would you review it and see it if you like it and if there are problems call us and then get back to us by January 1st and by that time we had a bill that was ready, it had input from various communities within the state, that we could run with and we knew where our support was. Now taking that information off those ballot forms... We have a McVee Card System which is called the poor man's computer that we use. We send out alerts on various issues. We don't constantly keep sending ... We send out a major newsletter about four of five times a year, but on individual issues we can go through with this little card system, and we have got the labels already prepared, we can send an alert to our welfare people just on welfare issues. Like this bill is coming up ... the Cost of Living Bill is coming up tomorrow, in a week, you need to do something about it. Or to our senior citizens or to our people interested in consumers so that at least to the attorneys and to the clients you are not sending out paper constantly constantly asking them to do something unless it is in their specific issue area.

________________:

Is it correct then that some of the issues you worked on were requested by people other than clients?

CHET JUNE:

Yes, but let me back up. Every single issue that we worked on had eligible clients voting on it and it was a majority of clients voting on it. I mean we did not ...

_________ ________:

They voted on it, but say if you were audited or whatever for every single issue could you identify an eligible client who requested your assistance on that issue?

CHET JUNE:

Yes, and not only could we identify our own eligible client we could say that there was a majority of clients who requested that issue above and beyond other groups. Am I making sense? Let me give you an example. The top vote getter was a bill to eliminate sales tax on food and medicine. A tie with that was also a senior citizen bill to eliminate senior citizen's taxes, medical costs, any fee for any senior citizen on anything. I mean it was like ... We called it the Free Senior Citizens Bill. Well, we knew that there were other senior citizens out there and not all senior citizens were our clients. That did not receive ... We could look through all the ballots and see that it was mostly the senior citizen groups that had voted for that, not our clients. However, our clients had voted for ... We could look on the sales tax issue and see not only had the senior citizens voted for it, but we had a majority of clients who also had requested that. So, yes, we can go back. If we did get audited we can go back.

We also have in addition to that request forms where attorneys or clients can send things into us during the year on a form that we have, a request form, and we become of counsel in a case, or I become of counsel. Like if somebody is having a problem in a probate area that really doesn't affect ... Well, for example, in Illinois illegitimates cannot inherit from their fathers, but they could automatically from their mothers. This created a problem sometime when the father and mother had not been married, the father died at an early age leaving small children who could qualify for $50 a month. You had to establish that the guy was the father. That really didn't affect too many clients, but we got five requests from it from various parts of the state. So, I figured hey, there is this little problem out here and we got involved in changing the Illinois probate law. Luckily there was a case going in at the same time. The case said Illinois' probate law was unconstitutional because it discriminated and so we were right there the day the Supreme Court said it was unconstitutional and we said here is a bill and the judiciary committee passed it and we could say these are the clients that requested that service.

____________________:

(Question inaudible)

CHET JUNE:

They were clients of our legal services program. We didn't go back and check. I mean we just assumed that, you know, people wouldn't tell us that unless it was true.

A lot of what we have done in our office is developing just very informal systems to keep track of information. When we started, as I said, both my associate and I had been in legal services. We had been in legal aid offices where cases had been, where people would leave and dump 105 cases on us and we couldn't, you know, go through a file ... I mean you would try and go through a file and figure out what was going on and so our philosophy has always been that if we were to die tomorrow somebody could pick up our case load. Also, if we were to self-destruct tomorrow we would have records in such a place that we could pass this on to somebody. We could store it somewhere and 20 years, maybe not 20, but four years later someone could come in and take over and know what we were doing.

I am available at any time to go into great detail about this. I won't go into the tips on lobbying, I think most of you already know those, other than to say that now is the ... I have a feeling, being here in Puerto Rico, that it is sort of like in the book "Hawaii", the dance that the Navy had on the night of Friday, December 5th, 1941. There was this big dance at the Pearl City Naval Base. I have a feeling we are like that right now and if we don't start doing something very quickly the Japanese are going to get us with our pants down at about 7:00 o'clock Sunday morning. So, if anybody is interested in getting techniques, style, we have been very successful. I attribute it very much to having a good staff, backup, and in the way we are organized, and the way we present ourselves to the legislature.

I have nothing further. Are there any other questions? Yes?

______________________:

(Question inaudible)

CHET JUNE:

I think it is like an attorney or a representative with any other issue. Well, first of all, in Illinois ... it is a highly political state and the worst thing you can be is an Independent. God forbid you should be an Independent. Better that you are a Republican or a Democrat because you know how to play the game, but if you are an Independent you are a crazy person and we don't even want to talk to you.

In presenting myself as a Republican I say I am hired by my legal services clients in the same way any other lawyer or any other legislative advocate or lobbyist is hired by their clients. I happen to believe in the program and so that is why I am working for it. Also, it is really fun. I was in ... War story. The first time I was in the committee, House Human Services, I was there with my banker's suit on, short hair, and it was my first time I was there and I was lobbying for a cost of living increase and Clarence Neff, who is an old ... from Monmouth, Illinois who is a Presbyterian elder, and I went to Monmouth College in Monmouth, Illinois, and he knew who I was. He thought I was representing ... He thought I said the First National Bank. He voted Aye on the bill to increase the welfare appropriation by five percent and all the other Republicans saw him voting Aye and they voted Aye. They figured my God, if Clarence is for it; we can be for it. Sure enough, it got out on the floor before Clarence realized ... He said, "Well I thought you were representing the First National Bank." I had to explain to him, "No, Clarence." "Well, you don't look like one of those hippie welfare people." You know, so that was part of the battle. So, with that ...

Yes, a question?

______________:

What is your affiliation, or how do you work with the Bar Association?

CHET JUNE:

I am a member of the ... and County Bar Association, which is our county bar association, which automatically makes me a member of the Illinois Bar Association and we get along very well. We ... Their lobbyists and I, we have developed a good rapport over the years. He handles a lot of the probate stuff that I don't even need to get involved in. He also handles a lot of the domestic relations and all we do is support each other. I mean if ... It is to the point now where ... We fought him once or twice. Not fought. We were pushing for things stronger than what he was pushing for and we succeeded twice. So, now he comes to us at certain points and says, "Can we have your support?" which in many instances is just our signing in on a bill. But, we have good relations with the Bar except for one county in Illinois with legal services in general. I think that has carried over into our relationship. I can see in some states where you are having a trouble with the Bar Association. It can really be detrimental.

______________:

I am wondering if you can talk a little bit about how you handle problems that I assume must arise in a state that has a big metropolitan area, you know, a lot of problems of the urban corps and then the rest of the state is in many respects heavily rural. That must be typical of a lot of the states that other people come from and I wondered if you could just talk a minute about how you sort out some of the conflicts that might come up. I am not too certain that it ... It could come up a little bit in terms of setting overall priorities, but then even within a particular priority that you are working on how do you in your office sort out some of the conflicts that come up sometimes on what position to take because it will affect poor people in Chicago differently than the way it will affect poor people downstate?

CHET JUNE:

Did everyone hear the question about the rural versus urban? Illinois, as I would assume almost any state has, we have Chicago which takes in Cook County and then we have downstate which is everything outside of Cook County. Even including north of Chicago it is downstate. The woman over there giggling is Laura Green who is the president of our State Clients Council and what is so nice is she was a legislative intern in our legislator's office and now she believes me when I tell these stories. She didn't use to.

The way we resolve it is in many instances ... Well, I will give ... General assistance was a prime example. In Cook County they didn't have problems with general assistance because the townships ... The city of Chicago is a township, the city of Evanston is a township, and then there is about 13 other townships. ... They had elected to come under the state purview to raise their millage level to the highest rate and then the state comes in and takes on every, runs your program and anything you spend over a mill the state picks up. However, we have 1400 some townships in

Illinois that are all governing units within counties that have general assistance programs and only 40 have elected to go under the state. So, you know we have got, downstate we have got tons and every two years they change and general assistance is, you go to the township supervisor and you catch him when he is on his tractor somewhere and say, "Hey, I have got some people downtown and they really need some help." He says, "No, they are lazy bums. Their family hasn't worked in years. They go out and drink. We are not giving them the money." You know, and you ask him for his rules and regulations and he doesn't have one. We have gotten into a fight on the issue of forcing downstate townships to come under the state program. Downstate townships and even legal services don't want that. They want to have local control because they figure if they get written standards it will be good, urban townships, however, see no problem with us forcing all townships under state control. This is just one instance.

Sometimes we get into money problems. The problem we have most of is convincing downstate legislators that they have poor people. In the general assistance area we got downstate people involved through their churches. Specifically, let me give you the Clarence Neff example. There is a Hunger Task Force in several churches; the Methodists, the Presbyterians, Lutherans, and the Roman Catholics. Through Catholic charities, Lutheran social services, the Methodist Bishop, and the Presbyterian Moderator. So, what I did was using, knowing that those were Hunger Task Forces general assistance provides money for food, we contacted the leaders, church leaders, in the Monmouth area and said, "Hey, Clarence Neff is voting against this general assistance thing. Would you please tell him that there are poor people in his community?" Well, the poor people in his community are white elderly people who are widows or widowers who live out on farms who use the Meals on Wheels program. So what they did is they came into his office and said, "Look, Clarence, we need general assistance. Here is why we need it. For these people who can't get Meals on Wheels. We would encourage you to support a state takeover of this program and, yes, you do have poor people." It is being able to identify that the issue downstate is just as bad as it is in Chicago.

I don't know if I am .... There is all sorts of other nuances. It goes the opposite way to convince ... In Chicago you can go to the Welfare Office, you can go to the Department of Children or Family Services and you can go to the Labor Office to get your pink slip signed to get on the WIN Program or at least register so that you can quality for ADC and you can do it on public transportation and the odds are that if you are going in the same direction you can get a transfer and it costs maybe five cents more and you can go back home and it may cost you a buck. When you are down in Podown County, Illinois not only do you have to go over to Union County to get your labor card stamped, or the pink slip stamped over at the Department of Labor, to go to DCFS you have to go up to Polk County and then back down to Podown County and a lot of urban legislators don't see that there is a transportation problem downstate. So, we go through the battle every year of the RTA in Chicago, Regional Transportation Authority, gets all the transportation money in Illinois and downstate Dial-a-Bus, you know, is lucky if it gets two cents. So, we constantly have that fight and resolving it in the office we just, some years we do the urban work and some years we do the rural work.

I am babbling on. Any other questions? Steve?

_______________:

(Question inaudible)

CHET JUNE:

I am sorry. What role do they play? It is no different than a client would in, for an attorney or lobbyist in private practice. We are ...

Oh, I am sorry. The question was ... During the legislative process if you need to resolve a policy question or a conflict how do you do that for clients and how would you explain that in an LSZ audit? Well, Laura Green is here. I would say relatively informal. First of all, as I said, in private practice we don't do anything different than the private lobbyist or the private attorney does when he or she lobbies. When our clients hire us we up front in these training sessions, or when we go around to client groups, say that once you have selected priorities you have to rely on our "political savy". We may have 10 seconds to make a choice that is going to affect a major program. We may have to compromise. Instead of getting a nine percent cost of living increase we may have to compromise on a five just so we get something. If we have time we will run it by the president of the State Clients Council and the president of the Chicago Welfare Rights Organization. If we don't have time we are going to take our best intuition and go in and do it. I mean that is the only thing I can say. There are sometimes when we get screamed at. Well, luckily our president lives in Springfield and so that is very helpful, and she was working in a legislators office and sometimes we were both on the same committee so there is this, if I had to go running up to her office, which I think I did about once or twice, you know, now what do we do. So, the communication lines were constantly open. If we did do something or if we could warn people that something was going to happen we did that in alert and then if something did happen that people didn't like we wrote and said this is what happened and if you don't like it this is what you can do with it ... no ... this is what happened. If you don't like what happened here is the legislative remedies. Here is who you need to contact right now. But it usually in many instances came down ... If it was a welfare senior citizens issue I made the decision, or if it was consumer housing my associate made the decision.

Thank you.

JUNE GILL:

I want to respond to a couple of things that Greg and Chet have said earlier. I guess my perspective is Colorado is a fairly small state and there is only one of me and I have to be spread pretty thin. I am trying to adapt the Illinois Lobbying Manual to Colorado and for those of you who want to do it let me tell you that it is more work than you might think. I was going to cross out Illinois and put in Colorado, but the process is different in our state and the system is different and so there is a lot of work to it. But, I do think it is going to be valuable. We have a lot of support groups that I work with who are endorsing my stealing Chet's manual, which he is very generously allowing, and I think that you may want to think about trying to do that in your own state.

Talking about the regulations, the Legal Services Corporation Regs, in Colorado we have a conservative public interest law foundation called "The Rocky Mountain Law

Institute" and this is run by the Coors family and Joe Coors is going to be one of Ronald Reagan's new advisers. So, on Wednesday morning at 10:00 o'clock my office phone rang and it was the Rocky Mountain Law Foundation calling to ask who I was, who paid me, was I in fact a registered lobbyist, and did I in fact follow the Corporation rules and regs. So, I mean we are very vulnerable and you have got to be very careful to be sure you are registered and be sure you are filing your disclosure forms and that you are being careful.

On the priority setting business ... My first experience was to go to the 20 offices that we have in Colorado and say to, I met with staffs, I met with client groups, I met with community people, to say, you know, what are your legislative priorities and I was going to give the one that got mentioned the most the top priority and on down and do you know that I never had the same issue repeated in 20 offices? Part of it was because it is a really unsophisticated group. Legislatively they have never done this. They didn't have any idea. They kind of told you the first thing that came off the top of their head, but it wasn't quite as easy and had some interesting ... the legalization of cock fights, and the licensing of lay midwives, and all kinds of things. So, priority setting Chet has got down to a fine tune and I am working on that in Colorado.

We have, because there is only one of me and because at the legislature I masquerade as a Republican ... I am actually in fact a Democrat, but somehow they think I am a Republican ... I am married to a Republican, that might make some of the difference ... But, anyway, I try and keep a fairly low political profile as far as parties is concerned and I think this is a matter of style and different people choose different ways to go. I mean Chet was just very active in the Republicans for Richard Bailey election in Chicago, or in the whole state, and on the political stuff it seemed to me that I have to work with whoever is elected and it is best if I am perhaps not very politically visible. On the other hand, if you work in a campaign for somebody and they get elected you have got more clout there and so the way I did it this year was to become the finance chairman for a local attorney who was running for the state legislature in my district and he won and so I think now I have got a good in. I really encourage the people in our program to get out and work on individual campaigns on their own time, mind you, not on Corporation time, and I think that that really helps us a lot. We have one person in each of the 20 legal aid offices in Colorado as a legislative advocate. They come in and we do a training every year for them and we have had a really good ... I mean the same people are still there in an awful lot of the offices so they are getting much more sophisticated. They come in and they train and then they come in and spend a day with Jane at the legislature and they come in individually and just spend a day puppydogging around and watching the system in action and that has gotten an awful lot of enthusiasm going. A lot of people who had taken high school civics and that was kind of their last experience with the legislature. So, I think you might want to think in terms of trying to get your program people in.

The other thing is, at the legislature, I think I would disagree with what Chet was saying in one instance and that is ... I think it is more important to have more people come and not to have me speak on each bill individually. They say, "God, it is that Gill woman from legal aid again. She is always here and she is always ..." So, we really work hard to try to have lawyers who are experienced in substantive issues, clients who have specific problems come in and present the testimony. It has to be orchestrative. Just the timing of legislative hearings is so bad that often times you don't know when your bill is going to be up and I will have an attorney come in from Alamosa and sit around for a couple of days waiting for his bill, it doesn't come up, he goes back to Alamosa, it comes up, and I am there. So, I try and know enough about the issues so that I can make some basic statements about this is a punitive measure for poor people. I would be glad to tell you more if you are interested, but I just want you to know that the people that I represent are being hurt and if you pass this that it will have serious consequences for my constituents. Always trying to say too that there is more information available out in the field that I will get to you if I want it. When they look at, you know, more than a thousand bills a year they don't want more information on a lot of issues. So, I think you have to be careful not to overload.

The thing that I want to address today, and I will do it, I think, briefly because it is a long day and we are not going to go to noon here. I will give you that right now. Is how to do networking, how to build coalitions, how to get involved, and the best way I can do it is to tell you what I have done in Colorado and if you don't have the same groups operating in your state you can transfer this to whatever groups you have got there. I think you have to be really active and I spend a lot of time on boards of directors of other organizations. We have a group called "The Colorado Social Legislation Committee" which meets every Monday for lunch and has legislators come and talk about substantive issues. On the board of that brings me in contact with an awful lot of other groups. It is not a real powerful group because it is too diverse. There are too many people, they have too many interests, and we don't really zero in on one thing.

I am on the board of something called "Denver Conciliation Services", which is a kind of iffy group that is looking for alternatives to dispute resolutions. I am on the Common Cause State Board. They are more interested in process and not in substance particularly and they are not geared into poor people's issues necessarily, but there are some very powerful people on the Common Cause Board and then we tie in with them. I am valuable to them because I am at the legislature all the time and I can really tell them what is happening on the bills that they are following as well. I have been active in the League of Women Voters for years and that is another group. They are as slow as molasses in January to come to positions, but when the come to positions then when they are in support of our issues it is a good alliance to have.

The Colorado Bar Association ... I am a nonattorney and the Colorado Bar Association puts me on a lot of committees just because I am their token layperson. They like to say that they don't always have lawyers on the committee. But, I think we have had a real impact on the Court Appointed Attorneys Committee of the Bar Association. Greg Wald and I both served on it. I do funky things. I am on the University of Colorado's Alumni Board and I do legislative things for them.

The conflict question comes up. Okay. Suppose there is an issue and I am only paid by one group. I am only paid by Legal Aid. My first alliance is there and that is where I come down. I think that when Greg is saying that legal services are winning on the mental health commitment that was a, I mean that is a fiscal win. They decided that if they locked up all the people they thought might be dangerous that they were going to have to increase the state hospital tenfold and they couldn't do that. So, it is a problem. There are conflicts. When you do this networking you have to be real careful. I think the League of Women Voters ... It is called "A Campaign Handbook", and we are not talking about running a person for office, but we are talking about a campaign for an issue. There is some really good information in there about how to link up with other people. The in word this year, of course, is linkages.

Senior citizens are really influential and they are one of the groups that have the time to spend. We have a Colorado Congress of Senior Organizations, we have the American Association of Retired People, the Retired Teachers Association, ... We have just started a group called "The Senior Lobby" in Colorado which is patterned after the Washington State Senior Lobby. The American Association of Retired People has 160,000 people in Colorado and they all vote. I mean that is one of the things. One real problem in representing poor people is that by enlarge the legislators don't think that poor people vote They don't think it makes a difference and they tend to ignore the problems of the poor because they don't think they are going to get thrown out of office the next time. If we can convince our clients to vote and to be heard from ... We had a marvelous takeover in Trinidad, Colorado where our clients ... There is a Spanish/American majority in Trinidad, but all the Democratic precincts were controlled by wasp types. The Chicano community down there decided that they were going to take over the Democratic party and that they counted up how many people had gone to the precinct caucusses two years before, how many people they would need to have at the caucuses in order to have a majority vote and they orchestrated this on a precinct by precinct basis and they went in and they took it over. So, you have got to tell success stories like that and you have got to have people feel that it makes a difference where they are coming from.

We work with some of the poverty groups, some of the governmentally done caps and the Denver Opportunity Program. Also citizen groups that are functioning groups. We have a really active gal named Carrie Hershman. I don't know whether any of you have ever run into her, but is a community organizer. She runs the Concerned Citizens Congress of Northeast Denver and they get more things done in that group on a local and she makes a very strong pitch that before we can get clients really excited about state legislative issues which are further away from them you have got to do some success lobbying on the very local level; get the street lights in the alleys, get the stop sign at the corner, do some things there so that people have a sense of community and a sense of success and then you can begin to say but the Uniform Landlord/Tenant Act is something that you also could be involved in and could be working at the state level.

We have the problem of urban/rural and that is that most of the lobbying is done by the people in the Denver area just because they are there. But, we really work hard to try and get out. I send a weekly alert to all of our offices, to all of our client council presidents to say that this is the state of the art this week. Here is where this bill is. This is the committee and here is what I would suggest you do. We need to contact all the Republican members of the business affairs and labor committee in the senate before it comes up for hearing next Tuesday and, you know, just a real brief blurb. I think people need to have some confidence. They don't need to understand every single word in every bill before they can say they are for it or against it. You can just say in principle you are and don't be afraid to say I don't know the answer to that when the legislator asks you a more detailed question, or I will go back and find out. We burn a lot of midnight oil while I go back and find out what the answer to the question is.

We have a really active utility group and we work a lot with them. In the war story category, last year an emergency rate increase bill was introduced in the state legislature which was a shoe-in. There was no organized opposition to it and it looked like everything was going to be fine for the public service company and we went to work with the senior citizens group and the utility group and succeeded in defeating the bill. I am now told that it is being introduced again next session so we are going to be back at the same battle.

Hunger groups, nutrition groups, bring in issues that they want us to work on them with. We are going to do a gleaning bill this year and a local option school breakfast program. We work a lot with the good guys in the nursing home industry. The nonprofit nursing homes are a group that we find really supportive and helpful and they know a lot of the ins and outs so that we can get at the nursing home industry. Last year they passed an alternative to nursing home bill which the nursing home industry had been fighting for years.

Then, for some reason, I think it is because I am middle- aged and middle-class, people trust me and the Department of Social Services invited me to come to their Tuesday morning legistlative strategy meetings and I feel like I am an infiltrator, like I am the enemy, and they will make comments about oh, God, you know, your general assistance sued against us here and why did you do this and do that ... I am talking about the litigation angles of it. But, that is a place where we now can do some things. The Department of Social Services tends to ... I am sure you know this ... do the bureaucratic thing, do the administrative thing and kind of get the simple way out. One of our attorneys in Denver sued the Department of Social Services for not implementing a statute which ran a special needs money to A&D recipients, won the case, the next thing we see is that there is a bill to repeal that set of the statutes. Forget about special needs for A&D. That is the way we are going to get around it. I went to them and I said what are you doing and they said, well, you know, they don't appropriate any money and so we are not going to be able to do anything about this and we would just as soon have it off the books.

________________:

Can you tell us how this came about that you got on their committee?

JUNE GILL:

Yeah. I mean I spent a lot of time and when I was on an issue, on either side of the issue, I always sought out their lobbyist, their legislative liaison person, to talk with and to explain why I was going to oppose it or why I wasn't and I think they realized that we actually can make more ground together than apart.

________________:

(Question inaudible)

JUNE GILL:

This sounds probably kind of Pollyannish, but I am just so honest and so up front and one of the groups that we work with is the Catholic group and we hit an abortion issue obviously on this and Sister Loretta Ann and I will sit there and we will say we are going to be on different sides of this issue and that is fine and I respect where you are coming from and she respects where I am coming from and we then push it aside. I mean the same thing happens within our program. I had one office saying, you know, Jane, you have got to push for mandatory auto insurance in Colorado and another group saying my God, that is the worst thing you can do to our clients, particularly the rural clients, and we have got so many issues that we can work on that I really just beg off if there is conflict, particularly if there is conflict within our program. I am not going to lobby on it because then we are going to be in bad shape.

This is another thing that sounds as though you are sort of autocratic, but you have to be real careful that you speak with a unified voice and we had a big hassle last year when a constituent, well, a client, asked one of our attorneys, a supervising attorney, in an office to draft legislation on child support. He didn't do it. He got a friend of his in the legislative drafting office to do it. Didn't run it by me and the attorney who supervises my work. The first thing I knew I saw the bill printed and the sponsor of the bill, who was a decent lady from Jefferson County, came up to me and said, "I hear you don't like our child support bill. It was drafted by your office in Jefferson County. How can you do this?" I am going ... Uhhhh ... Yes, how can we do this? So, I really try and be very nasty and say don't do it without checking it through our office first because you lose credibility real quickly in that.

Then there is the special interest groups. I mean single purpose groups. I mean domestic violence legislation. They are only interested in one thing and we can work with them and they drag us in. Guardian ad litem task force is operating now and I meet with those. I mean I am in Denver at 7:30 three mornings a week during the session because we have, the Department of Social Services meets on Tuesdays, the AdHoc Lobbying Group, which is just a bunch of do-gooders who get together on Friday mornings to share things, and now Greg and Jim Joy from the ACLU, and perhaps the Bar Association lobbyists. We haven't quite decided whether to include her in this. But, we will probably be meeting ... not probably, we are going to meet one morning at 7:30 too. So, you do that and you spend an awful lot of time going around to these meetings and you spread yourself a little thin, but I think that basically on the conflict if Greg thinks more people should be locked up and committed to mental health institutions then that is okay for him to think that and he has some reasons. We always sit down and talk about it. I mean he said to me one day after he had just had a horrendous murder trial in Colorado Springs ... "God, June, you are letting all these people out." I said, "Fine, let's get together and talk about it." So, I brought him in with our mental health unit people so they could clear the air and found out why they disagreed and I think they respect that. I don't expect to be, you know, changing people's minds in vast ways.

One final thing that I will end with is to talk about the local networking and trying to get your local offices to do that. I have to confess that I am not real successful in that yet, but it is going to come.

The individual person in each one of our 20 offices needs to do a network within the local community and this is not just the do-gooder kinds of groups, but it is also media contact. I mean our little weekly newspapers around Colorado will print anything if you give it to them. If it, you know, sounds reasonable in the first paragrraph they don't usually go through the whole thing. You need to give out news releases so that that person in that office can take it to the Durango Herald and know somebody at the Durango Herald who will get the article in. You need to have that done locally. The legislators spend an awful lot more time listening to the constituents than they to do a paid professional lobbyist.

That also works then as far as local ordinances are concerned, as far as local rulemaking bodies are concerned, our zoning board. You all know that there are just a thousand and one things we can do and we are not doing, but I think that you really need to think in terms of getting a local networking going as well as the state one which I have been addressing primarily.

In Pueblo, ... a real success story down there, ... each one of the human service organizations was going to the city, going to the county, and saying you have got revenue sharing money; share it, and they were fighting among themselves. They decided to ask the city and the county to do a joint revenue sharing distribution and then they all got together and legal services and the Pueblo City Ballet and this group and that group all got together, went in and made a unified presentation, and got more money than they had asked for for the group and it was an incredible success story. I think that that is another area that you may want to, you know, explore, and that is to try and go together and try and gang up on them. That is particularly true of the little agencies.

Are there questions that anybody has about who are the good guys and who aren't?

Yes?

_______________:

(Question inaudible)

JUNE GILL:

No. Chet, do you know any local networking ... Basically, I think the personal touch. I mean I go to each office at least once a year and try and do the cheerleading there.

All right. Now, Barry is our final and wrap-up speaker who is going to talk about about things that have more to do with the national scene since that is her perspective ...

(End of Tape 16, Side 1/2b)

* * * *

(Beg of Tape 16, Side 2/2a)

BARRY SCHWARTZ:

... about how all of you folks, how local legal services people and state support people can work on issues that come up in Congress. Basically, my concern is to talk about how the national support centers relate to you folks; how you relate to us. At some point later on I would be glad to answer any question under the sun about how I specifically do my job in Congress, what next year looks like on poor people's issues generally, all of those sorts of questions. I would be happy to go into that. But, for right now I want to talk about our relationship in legal services between the backup centers and local folks because we all know perfectly well that you care about all of those issues that Congress addresses, that you want to fit into what happens in Congress, you want to have an impact, and we, in order to do our job, desperately need local activity, local communications to members of Congress. That is absolutely a critical part of our work. So, that is what I want to talk about.

In order to do that I think I need to back up a little bit and touch a little bit on what the national support centers are going through, what kind of processes we go through before we pick up the phone and ask you to help out on something. I guess a little bit of what is going on in my mind in deciding what to talk to you about is a kind of sense that I get that a lot of you are very, very busy at home and every time you turn around you are getting another mailing or another phone call from a backup center in Washington asking you to do something and I just wanted to sort through some of those issues so that you know that by the time we pick up the phone or by the time that send out a mailing to you we have sorted through some priorities, we know what sorts of things you might be able to help out on and we are trying to be very judicious in deciding what to press you on to help us out on.

Basically, I think that most of you know that there is around 17 national support centers now and one of the very encouraging developments of the last couple of years, again as you all know, is that most of the support centers have now opened Washington offices. That is something that the

Corporation has definitely encouraged and supported. All of the support centers have to have boards of directors just like you do, and basically our boards of directors reflect the same sorts of constituencies that you have at home. It is just that we are talking about doing it on a national scale. We tend to represent national groups and I would say that just about every one of the national support centers, for purposes of keeping ourselves honest, assuring our own accountability, making sure that we are getting very good input on the priorities we set and the kinds of decisions made, all of us in some way or another have taken a lot of pains over the last few years to try to nurture the development of major national organizations of low income people around our different substantive issues. So, we relate to national groups as well as to all of your individual clients and state and local client groups.

Every support center has a different mechanism for deciding priorities, for deciding what kinds of issues we are going to work on. A number of us have over the last couple of years developed questionnaires. FRAC, for example, sent out a major questionnaire this summer to everyone on our mailing list. We have about 4500 people on our mailing list. We asked people to rate the different activities that we work on, and when I say activities I mean both substantive issues. We listed every possible substantive issue generally falling under the rubric of food and hunger and we also, aside from the substantive topics, we also listed every kind of FRAC function; information dissemination, administrative advocacy ... all of those more process activity kinds of things, and we asked people to rate those and give us a sense of what they would like us to be working on. Now I always add a major caveat to the effectiveness of doing a questionnaire like that. Namely, I really think that people want us to exert some leadership too. We never, and I don't think any support center, I don't think any of you really literally bind yourself to follow the quantified results of a survey or a questionnaire like that because you know that your constituency, your clients, also want to hear from you. What do you think is important? What are some of the new directions you think we should be going in? Et cetera. So, it is not just one way. We also feel that we have role in terms of educating people, showing them that the payoff and working on one issue might for temporary political reasons be greater than working on another issue ... that sort of thing. So, it is an ongoing two-way process when we all send you questionnaires or surveys or that sort of thing.

In addition, to talk specifically about FRAC just as an example of how a single support center focuses in on the issues it is going to work on. FRAC has been very much involved in the last year in developing something called "The National Anti-Hunger Coalition". This is a fairly formally constituted group by now. We have had four quarterly national meetings now in the past year. In every USDA region in the country there are regional representatives to the National Anti-Hunger Coalition involving recipients of the federal food programs as well as advocates. We have done training of the NAC membership. We ~~what~~ want them to increasingly be very adept at joining us in Washington to lobby. Certainly they ... Members of NAC came to Washington in April to lobby on the big food stamp crisis and so we have put a fair amount of time and specifically written materials and training into helping to develop them, people from all over the country, to learn some of the skills that we have to use to try to influence Congress. Now obviously FRAC is going to work in Washington on the federal food programs, on the food stamp program and on all the child nutrition programs, and when we are directing our efforts towards Washington we obviously hope that you will join in working on your individual congressional delegations to try to influence the final result in Washington. But, also, again, it is a two-way street. We also want to go the other direction too and try to help you influence your state legislatures on food issues. Specifically we care a lot about issues like trying to set up breakfast mandates, school breakfast mandates in the states. Michigan has a very good one. Texas has one and they are trying to repel it. That sort of thing. Also campaigns that so many of you have been involved in to repel state food taxes. That is something again that FRAC very much wants to back you up on. So that also is a two-way street. One of the things that I always try to preach about is that I think it would be very unfortunate if we develop a kind of hierarchical sense that the national support centers are doing the fancier work in Washington. That is very much not how we view it and we certainly don't want to do anything to try to ... We would like to do everything possible to make sure that the people in legal services don't have that view either.

I wanted to touch for a minute on who contacts you. When we are working on various issues that come up in Congress how do we decide who is going to contact you? I have said that there are 17 backup centers. Is it absolutely essential that you get 17 different calls? Can't we coordinate in Washington so that you are not pestered by all of us every time you turn around? I would answer strongly no. That is not how the system should work. About three or four years ago there was a very serious proposal afoot to try to really merge all of the Washington Congress oriented activities of the national support centers. The idea was that this should all be more coordinated, we should be making a single unified effort to influence Congress, and to a certain extent, if you think about it for just a moment, that might be appealing to some of you. Again, to those of you who seem to be the point people in your states who get these calls from Washington that might sound appealing; you would just have to deal with one person instead of all of us every other day calling you. Well, for a variety of reasons that kind of proposal of having a single unified legal services presence in Washington on all substantive issues, that idea was not implemented and I think that one of the best reasons for not going ahead with that is that we are very much committed to a pluralistic approach to this. We really think that you folks and, most importantly, clients all over the country are better served when there isn't just one program in Washington that is making the decisions ... Are we going to go for housing this year? Are we going to go for Bill X, Y, or Z? I think a lot of us are really committed to the idea that the end product is going to be better for having had different points of view expressed to Congress.

All of us in the national support centers in the Washington offices meet at least once a month to share information, but we really feel that even though in some respects it makes your job more difficult because you are having to decide ... You are having to decide ... Am I going to respond to the housing law project? Am I going to respond and help ~~who~~ whom? I only have so much time, who am I going to help out this week or this month? Even though that might create problems for you we really feel that it is better for you to have all the information about what is going on in Washington and make some decisions youselves about what you can most work on in any particular time period. I think the system works better for that.

Then there is also the question of who do we contact in the states. Not just who contacts you, but who do we contact. There there is some important issues that we really need your help on. In many respects we want to contact the people that we know most care about our substantive issues. If there is another food stamp crisis going on or there is a child nutrition bill pending in a House/Senate conference, which happens to be the case right now, in terms of who I am going to call in a particular state to do some work on the congressional delegation I am going to be inclined to want to call the people who I know substantively in your states work on food issues because they are going to quickly realize how important something is, they are going to have the background to analyze it, and I can have a greater assurance that they are going to do the job because I know that they are really personally committed to the issue. On the other hand, the people who work substantively on some of these issues in the state might not be the people who really know that congressional delegation. They might not really be the most politically savy people that have the best contacts with the congressional delegation. Then too sometimes we get instructions from you. For example, FRAC got a letter, which we very much appreciated. FRAC, and I think all the national support centers, got a letter from Marshall Cohen, who a lot of you know in Pinetree Legal Services in Maine, saying saying, "Please, backup centers, do not call everyone under the sun in Maine for help on your issues. The way we have organized ourselves in Maine is you are supposed to call my office ..." I believe Marshall is in the state capitol, right, in Maine. "... you are supposed to call my office, you are supposed to ask for me and I will then get the job done. This is the way we want it done in Maine." That is perfectly fine for us. That helped us out a great deal to know that and that is the sort of thing that I encourage you to think through in your states. I don't want to be too formal about it, but if you want to give the national support centers instructions like that about how you want to coordinate things in your state, you know, please feel free to do that.

I also want to make a point about how you can help us out to make people realize in your state that they do make a difference when we put out our mailings, which I know you must get several each month from all the support centers, asking local people, local legal services people and clients, to try to get letters coming into Congress on different issues. Even though I have spent most of my career working as a lobbyist in Washington on legal services issues there was a time period when I was working in a local program and it was really incredible how quickly my head changed and I suddenly, despite the fact that I had been doing work in Washington and I knew how much those local communications mattered, somehow when I was in a local legal services office with a big caseload and I would get these mailings from national support centers suddenly I just couldn't figure out how I related to that. First of all, I didn't have time to do a whole lot on that, but, secondly, I kind of thought ... Who me? Little me write a letter? Or, me get a couple of people, church people or whoever, locally to write letters? That is not going to influence Congress, a couple of letters. ... And that is just not true. I am sure that you know in your state legislatures, and it is even more true in Congress, they literally weigh the mail. They ... It is absolutely true. And, you can help us, assuming that most of you do legislative work in your states, that is why you are here, you can help us convince all those local people, local program boards of directors in your states, local clients groups, that they do make a difference because there is ... I mean especially now. Especially after last week there is a kind of feeling of impotence and we are just going to have a harder task than ever convincing people that they can make a difference. FRAC has certainly learned a lesson about that this spring. In the food stamp crisis that we faced this spring, which I am sure all of you were aware of, I can't tell you how many conservative members of Congress said to us, or were quoted in a national media as saying, "I never realized food stamps meant that much to so many people." You know, they said to us, "Would you please turn off those telegrams and those phone calls. It is driving us crazy. We got the message." It really made a difference and, again, not to beat a dead horse, please, anything you can do to develop that sense among people in your states that anything they can contribute makes a difference. We would be very grateful for it.

JUNE GILL:

May I make a point on the food stamp issue. We have Senator Armstrong who is very conservative in Colorado and has consistently voted against all food stamp legislation. He made a comment that he had only had three letters on the food stamp issue and I think you want to be real careful that you don't ignore the opposition and think that because you know they are going to vote against you you are not going to let them hear about it. Flood them, just as well as you flood everybody else. Don't expect to change their minds, but at least they are going to know it is an issue you are into.

BARRY SCHWARTZ:

Well that is ... I am glad you made that point because that is something that a lot of us have thought a lot about, particularly when you consider the obvious peril that legal services is in. Do you play it safe and not contact conservative members because it is only going to increase their awareness that legal services is lobbying? Do you play it safe, or do you follow through on your commitment to the issues you are representing your clients on and contact them nonetheless?

I remember there was an episode sometime this summer that all of us who work in the Washington offices of the support centers were talking about in a meeting. On some issue, and I really don't know what it was, some issue, some of the legal services programs in California were writing letters to members of Congress and in particular on whatever this issue was they sent a letter to Congressman Barry Goldwater, Junior. This became a big cause celebre' in Washington and Barry Goldwater, Junior was so upset that he had been contacted on an issue on behalf of legal services clients. He was so upset about it that he got into a colloquy on the House floor with another very conservative member from California about ... and it was a very deliberate colloquy to try to create legislative history saying that legal services programs shouldn't lobby ... and

I remember vividly a meeting that I was at where all sorts of people were clucking, and, again, to some extent there are plenty of people in the national support centers, and this absolutely drives me up the wall, who will say, "Oh, those dumb local people. Don't local legal services programs know how to do this? They are so dumb." You know, that sort of thing. That is an attitude that I personally fight all the time. In any event, there was this clucking saying, "Oh, dammit, how could they be so stupid? Don't they know that Barry Goldwater, Junior is one of the most conservative members of the House? What did they think they were going to get out of sending a letter to Barry Goldwater, Jr.? It wasn't even worth the energy because he is not going to vote right on one of our issues." and I sort of got lulled into thinking that way and started saying, "Yeah, yeah, how dumb. Didn't they know what their voting record is? What did they think they were going to get out of it?" and then suddenly something snapped in me and I said, "Wait a second. I mean this is ridiculous. Barry Goldwater still represents people. He represents ... I am sure there are plenty of low income people in his district." Certainly as of a few weeks ago, and certainly this week we know it is going to take lots of turning around the heads of people like Barry Goldwater, Junior if we are going to get anywhere on a lot of our issues.

Similarly, on this whole foodless June campaign that we went through this spring, April and May in particular, a number of the legal services programs and CAT programs in Virginia got together and pooled together a delegation of some low income people and some CAT people from Virginia and they came up to Washington to meet with the Virginia congressional delegation to talk about what it was going to mean if there were no food stamps come June. Again, this created a certain stir. There were some members of the Virginia congressional delegation who were very upset about this lobbying and, again, there is a kind of an immediate reaction like ... Oh, for Christ sake, the Virginia congressional delegation is one of the most conservative in the country. What did they think they were going to get out of that? I mean this is ridiculous. The political hassle that causes, the inevitable static that we are going to get from lobbying the Virginia congressional delegation is just not worth it in light of what we can ever hope to get out of them." Well, that is the immediate reaction and, again, you stop and think about it and I just cannot join the people who would tell you to stay away from those folks because we are going to need those folks if you look at the numbers. And, aside from being practical about it, just to be idealistic for a minute, I mean hopefully that through enough education, through enough sensitizing of people, and trying to demonstrate to them that yes, in their very own congressional district there are poor people ... poor people aren't just those blacks up somewhere ... and I think we can all add that there is a heavy dose of racism in a lot of those attitudes ... you know, without those constant efforts we are never going to be able to win some of these issues. So, I just want to put myself on the side of the people who will not lecture you or any of the people you work with locally to stay away from the bad guys, because if you look at the numbers we have to go to the bad guys.

In any event, another thing that I wanted to mention was that you also can help us all out by trying to convince people that when it comes to particular issues that we contact you about it is not enough to suddenly pick up the phone and try on an AdHoc basis to influence a member of Congress. That is not the way it works. I think you all know that with respect to your state legislators. There has to be an ongoing relationship that you are nurturing. Absolutely the same thing is true when it comes to members of Congress. There is a need for an ongoing relationship. There is a need to let them know what your local legal services programs do for their constituents. There is a need to be very sensitive when they pick up the phone and ask you questions. I mean lots of us have worked in local legal services offices where we have got clients lined up down the street to get in, big caseloads, and then you get a phone call from a caseworker who may work in the home district office of a member of Congress saying, "Will you work on this VA problem? Would you please work on ...". You know. You think oh, God, that doesn't fall in our priorities and we just do ... You get hassled like that, but you can play a tremendous role in trying to sensitize local offices that they need to be really careful in how they respond to some of those calls. I am not saying throw priorities out the window, but that every little thing that you can do to nurture that relationship with that member of Congress is helpful. I think that you can do an awful lot to educate your own project directors about something like that. Again, that it cannot be a sudden AdHoc appeal to a member of Congress, just like it can't be on in our whole effort to support legal services in this coming year. It is not going to happen overnight. It takes the nurturing of an ongoing relationship with those members.

A story came up this past year that raised some eyebrows among some of us because the Government Relations Office in the Corporation got a phone call from a project director complaining that a congressman's office had called him up and asked him a whole series of questions about what the legal services program did, who they served, what kind of issues they worked on ... you know, just seeking an awful lot of just basic information, and the project director said, "I told them that they had no right to ask any of those questions. Aren't I right? Isn't Legal Services Corporation ... The Corporation was set up to insulate us from those kinds of political inquiries and wasn't I right to tell them that they just had no business asking me those questions?" Of course, that was not terribly politically savy and I think you would know that. Any of you that work in state legislatures would know that that is not the way to handle that sort of thing. You want to take every opportunity like that where a member ... It is not necessarily hostile, sometimes it is just out of ignorance, a member wants to know what this institution in his or her district is doing. We want to take advantage of all those opportunities and build a good image for legal services, both in terms of saving ourselves, but also in terms of being able to influence that member on substantive issues that affect our clients.

I really think beyond just talking about how the project directors should be developing a more ongoing relationship with their congressional delegation I think that the state legislative advocates can play a tremendous role in all of your programs in making your staff, the staffs of all the local programs more politically aware. One of the things that frustrates me sometimes, and this is going to be a little bit of Washington arrogance, one of the things that frustrates me sometimes is when I call up and talk to local people, talk to them about a particular issue and how it is important to get congressperson X to turn around on that or, you know, et cetera, and sometimes they just seem strikingly unable to do any kind of political analysis about what needs to be done; how we can work on that issue, how we can turn someone around, and that frustrates me sometimes. Sometimes it is difficult for me personally to understand how people in local legal services programs who are by the very nature of their work are working on intensely political sorts of issues. It is about power. If you are a landlord tenant lawyer in a local program you are dealing with power questions. Who in that community is going to have the power? Are landlords totally going to control the lives of low income people or are we slowly going to be able to help our clients wedge their way into some decision making power over their own lives? It is about politics no matter what you are working on. Somehow there lots of people in legal services that don't move from that, that experience of power relationships in their little area. They don't move from that to developing any kind of political analysis about what is happening to poor people generally in this country. If you are doing the political analysis in your subject area in your community then it shouldn't be that hard to understand what is happening in Congress to poor people. Why poor people are getting screwed in Congress ... what we need to do to turn that around. So, again, anything that state legislative advocates can do to help develop that kind of political awareness, political analysis on the part of all the local folks that we need to work on all the national issues, anything that you can do along those lines would certainly be great.

Finally, one other thing I wanted to mention in terms of how you can help us, and, hopefully, maybe if you have some questions we can also go into more of what we can do to help you on some of these issues. The final thing I would ask you to think about helping us on is we all know there has been a big turnover in Congress and we have lots of new members of Congress, unfortunately, and that means that those of us that work in Washington are faced with lots of new members that we don't know anything about. In many instances ... far from all, but in many instances some of those new members come from your state legislators and so I would urge you in your spare time ... which you have a lot of ... I am just joking ... to consider doing up just a real quick memo. It can be real informal. I am not asking for anything fancy, but maybe lots of you in your states could do up a memo for us and xerox it and send it to all the national support centers giving us a little bit of background on some of these folks. If you have got a particular relationship with some of them or if you know that there is ... even if some of them are real conservative, if you know that there is some winning argument that you can get to them on or some people they listen to ... that sort of thing. The more information we have about the congressional delegations from your state hopefully the less we would need to pester you about for information. Anything that you can get into our hands makes our job easier and means that we will just turn to you on the stuff that really is essential for you to help us out on. I would just ask you to consider that. I would be a big help and it is a way that you can try to feel more involved. It is going to be a real bad year next year. We all know that. These are some of the ways that you can feel like you are involved in what happens in Washington, because

God knows I know you all don't want to just sit home and read the newspapers passively about what Congress is going to do to poor people next year.

(End of Tape 16, Side 2/2a)

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BARRY SCHWARTZ:

I would be happy to answer questions.

______________________:

(Question inaudible)

BARRY SCHWARTZ:

That is right. I am just sorry I didn't say that before you had a chance to on the theory that we always like to get the criticism out before anyone can criticize us. That is something that we are really well aware of because so many people have told the backup centers that. It is clear that that point is 100 percent valid. That we call you, write you ... you are very busy people ... you take the time from your work, which means that you are working more than 100 percent of the time, you take the time from your work to make some of these contacts, to call someone for us on a particular federal issue and then we never let you know what happens. We don't give you the feedback, what came out of it. Was it effective? Did the guy vote right? That is absolutely one of the most valid criticisms that can be made and we are really well aware of it. That is ... All we can do is promise that we will try to do better on that. All of us. A lot of the support centers, when we have been working on particular campaigns, have developed voting charts to at least be able to show you how members voted. For example, on that whole ... Again, I keep talking about that food stamp crisis from this spring. We prepared a big chart.

Every single food stamp vote in April and May of this year that the House and Senate had to vote on we developed a chart describing briefly what the issue was all about and then telling you how each member voted and we tried to disseminate that as broadly as we could because that is critical. I think you also mean on a much more personal level who the staff people are, what they are like, how did they relate to you, what did they think of your contacts, all of that sort of thing. I think it is absolutely essential and I don't mind one bit that you remind us over and over again that we have got to give you that feedback.

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Before everybody goes I have a process question ... I want to ask a question of you, Jane, and of Chet. Your state advocacy program ... Are you a separate support group? Do you have your own separate board ...

JANE GILL:

No. Separate support group, no separate board. The four project directors of the support programs of Colorado set ... (Inaudible)

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I have a question for Barry. I wasn't completely satisfied with your discussion of (Inaudible).

BARRY SCHWARTZ:

Yes, I do. I am not positive what the answer is about what to do about that. There is no question that on all the various issues that Congress is going to deal with that affect low income people there is certain key actors. There is nothing you can do about that. The people that are on the various authorizing and appropriations committees. So, if you have members that are on those committees we are going to have to be contacting you to try to influence those members and obviously when you get a phone call like that you are already going to know that you have got a member on those committees and you are going to know that their vote is critical and I would hope that you would see that we have used some good judgment in asking you to work on that. Beyond that, when it comes to something that is going to be on the House or Senate floor, when it is a question of trying to lobby every single member, I don't ... Again, I am not so sure that you want a group of people in Washington to be sitting around a table and deciding for you that the food stamp prices is more important than Russel Long. You know, that is something that everyone should feel good about. That Russel Long has lost his little committee. I am not sure that you want a group of people in Washington to sit around and decide that food stamps is more important than an AFDC cutback or public housing is more important. I still think that the system works better if you know everything that is going on and you make some of your own judgments, and, hopefully, in our mailings we will sufficiently spell out what the consequences are of different votes going wrong so that you can make some judgments. I don't know. That is my point of view. If I were in a local program or a state support office I would want to know what the picture is in Washington and I wouldn't want people doing the prioritizing for me. But, obviously, I think you might have a different view on that.

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I am more concerned about targeting within delegations. Most of the requests that I have seen are blanket requests. Everyone in your delegations has been contacted. Well, maybe not everyone has to be contacted ... (Inaudible)

BARRY SCHWARTZ:

Yes, that certainly can be done and the other thing is the longer we are all at this the more experienced all of us become. It is just a fact of life in a state legislature or in Washington that some members are more influential than others. Particularly in a large congressional delegation, certainly in Illinois where I am from, there will be certain members that by virtue of their seniority or their personal popularity or God knows what are sort of looked to as leaders, you know, sort of looking well, how is he going to vote on this, and we start to develop a sense that if we can get Ross Chenkowsky and so-and-so to go on this they will poll a certain number of members. I absolutely agree with you that that fine counting is what should be going on. We should be developing that sense. We should be giving it back to you. You should be telling us that. There is no question about that.

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(Question inaudible)

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Speaking personally I would say yes. I think that would really be helpful to me.

BARRY SCHWARTZ:

But, again, more than ever we don't take any ... We cannot take anyone for granted. We had a huge shock this year in the House of Reprsentatives. By a two to one margin this year they voted in favor of recoupment in the food stamp program where poor people would have to pay the food stamps back if at some later point they got enough income. It is a horrible punitive kind of measure. It won by a two to one margin overwhelmingly. We fortunately were able to get it out in conference, but it was a real close call and the number of good guys that voted for that was just incredible, absolutely incredible. So, that is the flip side. You can't take anyone for granted either.

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(Question inaudible)

BARRY SCHWARTZ:

I have a real strong point of view about that. First of all, there is no question that I gristle at any suggestion that this should be done out of the Corporation. Not only for the practical political reason that God knows what the Corporation is going to look like six or eight months from now and if we have everything being done out of the corporation we are all going to be in bad shape because then it can be wiped out overnight. But not just for that practical reason. I think that all of this kind of work, this advocacy work has ... I mean absolutely essential to what we have fought for for so long is that these decisions have to be made by the people that are closest to clients, by clients themselves, and by local programs by the support centers. We don't want a bureaucracy in Washington telling us what we should be working on; that sort of thing. I think it is just essential to our, again, not just practical political reasons that we don't want it to be Howie Phelps, but also ... Okay. So, separating out the Corporation, that it shouldn't happen in the Corporation; again, I personally, but, again, there is room for lots of different opinions on this, I personally don't like that kind of notion. I think that ... And, also, doing ...

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(Comment inaudible)

BARRY SCHWARTZ:

Well, I don't think ... The other piece of it is is frankly my political analysis. What all of us ultimately care about, what every single support center cares about ultimately is meaningful welfare reform and a meaningful redistribution of wealth and income in this country. Well, getting from here to there is easier said than done and it so happens that there is not a majority in this country or in Congress for doing that right now and as a consequence what Congress ... not as a consequence ... what Congress has responded to is not giving low income people the dignity that comes with meaningful cash assistance. What they have responded to is these individual needs. We will hand them some food stamps. We will give them a Section 8 certificate. You know, that sort of thing. Which all of us get frustrated about sometimes because we know that that is not really doing anything to eliminate poverty or change conditions of poverty. In any event, you have Congress responding to individual needs. They are not responding to a poor people's platform, they are responding to individual needs and whether I like it or not, because in my own personal, political, and social views, I know that on the food issues I get the most mileage out of doing a bleeding heart kind of churchy feed the poor kind of thing and they are not going to listen to ... It almost can hurt me if they see that I am linked up ... That in order to feed the poor they also have got to swallow every other issue under the sun. So that is just another reason why I believe in the whole pluralistic kind of approach in the short run. And, I agree that if for process related reasons in order to make your lives a little bit easier if we need to coordinate more I am happy to do that, but I don't think any of us who work on particular issues want to really feed the accountability mechanisms that we have worked on, or give up the relationships that we have with particular communities by becoming part of just a much bigger thing.

JANE GILL:

I promised to let people out of here before 12. I want to make a backup statement Steve has got an announcement.

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The reason I just wanted to add this, I know some of the people here and we have been within the Corporation over the last year, and Barry knows it. Different things have gone out because of congressional pressure about legislative activities in the states and I just want to bring you all up to date on some things that are happening and then I need your help and some ideas on following through on some other issues.

Last April Dan Bradley sent a letter to Congressman Moorehead and you all should have gotten it. It is my understanding. I was out of the country at the time. Mario sent a letter, Mario Lewis sent a letter to all programs about legislative advocacy. There was, again, some more pressure and Mary Burdett asked Mario Lewis to put some stuff together so that we could report back to Moorehead. One of the things ... Somebody kept on mentioning about audits of legislative units. One of the things that came on the agenda was we do not, in terms of our oversight functions, the Corporation does not follow through, does not monitor legislative activity, and so we have said in a letter to Moorehead that the Office of Field Services, which has principal responsibility for monitoring local programs, has directed the staff of each of the Corporation's regional offices to specifically monitor the legislative advocacy activities of recipients. Each regional office will be required to augment its annual monitoring report on each local program by including the information on the legislative activities of the individual recipients. Additionally, where local programs have legislative units each regional office will specifically monitor those units. It says that if there are violations that are determined to be intentional formal sanctions will be pursued. If OFF staff find in the course of their monitoring reviews that a recipient's employees are not aware of the statutory restrictions this information will be reported to us. Further, the information will become part of the regional office recommendation for follow up action including TA.

It is really ... I have been in legal services for awhile and I have worked in programs in Texas, Georgia, and South Carolina and it is heartening to hear the level of sophistication that legislative advocacy has reached in a lot of states. I also worked in Illinois for a state senator and it is very impressive to know what is going on in Illinois. When we were doing it in Georgia and some other places it was much more of a hit and miss, mostly miss, proposition and because of that this isn't going to be as bad as it might seem. I think everybody realizes the pressure of how we are going to be looked at by a lot of people in the next year. So, this thing just shouldn't cause anybody too much hassle.

Some regional directors have been meeting here and one of the regional directors from San Francisco had put together some things that he had used when he looked at some of the legislative units, including the one that sent the letter to Barry Goldwater, Junior, and it occurred to me before we do anything it would be really be helpful if a few of you ... there doesn't seem to be a huge number of people here ... if there are few that maybe after this is over we can get together and I can show you what he suggested and what, if there are some other things that we should be putting in here ... maybe stuff from Chet's manual and things like that ... that we should say for the purposes of regional offices looking at legislative units in the future here is how you should look at them, and make sure that everything is covered, so that we don't have the situations where you don't have a file on a client who you say you are representing and somebody calls this client ... That happened to us in Georgia once where the client said I had no idea that somebody was going to go to the legislature for me. You know? I just knew that I talked to somebody in the program.

Well, I don't mean to beat this to death. But, anyway, if there are a few people ... Bruce isn't here. I know I have talked to Bruce Freed about this vaguely, but if Chet and some other people, whoever is interested, after this is over I will just be sitting over here and then we can go outside and sit at a table for a few minutes and you could help me in putting this together. Okay? Thanks.

________________:

(Comment inaudible)

________________:

I absolutely agree with you. One of the things that always gets said is "Can't we get the Corporation, at least for starters, in their new project director training, can't we get the Corporation to do more around legislative advocacy to show that it is definitely something that legal services people can and should get involved in, et cetera, because what happens is so many of us ... every backup center has a story like this ... where we call up someone that we know is working very hard on one of our substantive issues, say housing, and whoever you are calling will say, "Look, you understand this issue, it is really important to get behind Mr. So-and-So about it. Can you give me ..." Time after time we will get people who tell us, "Gee, I would really like to help you out, but my project director has told us that we are not allowed to do legislative advocacies." We are answered with, "I can't do it." That is too bad, obviously. So there is ... On just those basic levels it seems that there are a certain number of project directors who have that kind of attitude and it is not simply ... I don't think it is simply out of ignorance. I don't think it is only that they don't think that you can do it. I think a certain number of us don't want their staff running around doing it because they don't trust their staff or they think that their staff will screw it up, or whatever.

_______________:

... I mean there is one of me. I can hardly do what I am trying to do at the state legislative level and every time you send me a memo to do something I am going to ...

_______________:

Well, part of what I said earlier is that it works both ways. There are some states where all the legal services programs have gotten together and decided that they do want Jane to be the point, or someone like Jane to be the point person to get the calls and respond. That is what I meant about Marshall Cohen's letter to us from Maine, but if you very much have a different point of view and you want someone else to be responding to that; yes, let us know, and by the same token we should be more cognizant of the fact that we need to do more ... to project directors so that there are people in each state that will respond to us. I absolutely agree with you.

* * * *

(End of Tape 16, Side 2/2b)

Mr. PHILLIPS. I would also submit for consideration of the committee a list of questions which the Conservative Caucus Research Analysis and Education Foundation has submitted to the Legal Services Corporation seeking information about various aspects of Legal Services activity. We have been unsuccessful as an outside organization in securing this information, nor do we have the funds to pay the costs which a Corporation official indicated would be required to secure that information. Perhaps this committee will be more successful in obtaining it and I would appreciate your consideration of seeking out that type of information.

Senator WEICKER. Maybe you ought to have a Legal Services lawyer go ahead and represent you.

Mr. PHILLIPS. We will be happy to do it. They represent a number of other nonpoor clients, perhaps they will help us.

STATEMENT OF HOWARD PHILLIPS

Mr. Chairman, and members of the committee, my name is Howard Phillips, I am national director of The Conservative Caucus, Inc., a nonpartisan grassroots citizens organization. I appreciate the chance to testify in support of President Reagan's recommendation that no further Federal authority or funding be provided for the Legal Services Corporation.

The reasons for my support of this program's elimination are comprehensively developed in testimony which I presented on March 24 to the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, which testimony is attached to this statement.

During the brief time allotted for my remarks this morning, I seek to persuade you that any further appropriations to the Legal Services Corporation at this time would be both unsound and irresponsible, not merely because the Legal Services program, as presently structured, undermines the integrity of our constitutional system, but also because the U.S. Senate in general, and this committee in particular, has not yet undertaken regarding the Legal Services Corporation the kind of oversight which the public has a right to expect concerning any program which expends hundreds of millions of taxpayer-earned dollars—particularly one such as this, which has been authorized to use its Federal subsidies to impact significantly on the formulation of public policy at all levels of government.

Since the creation of the Legal Services Corporation in July, 1974, well over $1 billion has been assigned, with the concurrence of this committee, to the Corporation's control.

But to what degree is the committee aware of how that money has been expended? To what degree do you approve of the Legal Services Corporation's expenditures? In what ways, if any, do the members of this committee disassociate themselves from the Corporation and its policies?

More than any of your colleagues, Senators on the Appropriations Committee have been entrusted with the public purse, bearing both the opportunity and the responsibility for determining how Federal funds are used.

It is not just your State constituents, but the American people as a whole, who bear the consequences of your decisions and who are therefore entitled to seek your due consideration of their concerns about how you dispose of their money.

In years past, this committee may have acted with less than thorough knowledge of the Legal Services Corporation's goals and activities. But there is no need, or indeed, any justification for so acting in the future.

Your responsibility for caution concerning any further appropriation is magnified by the fact that no legislative authority for the Legal Services Corporation now exists, its authorization having expired last year.

Hundreds of questions could, and ought to, be raised, about the operation of this uniquely influential program. Permit me to respectfully suggest now a mere handful, which I hope you will find time to address before taking action on any additional Legal Services Corporation appropriation:

One, do you agree with panelists at the Legal Services seminar on Legislative Advocacy held in San Juan, Puerto Rico, directly after the November election that Legal Services employees should organize campaigns, at taxpayer expense, on selected public policy issues, and that federally funded groups should involve themselves in organizing the takeover of local political party organizations, as reportedly occurred, for example, in Trinidad, Colo.? Do you support the organization of media campaigns, at taxpayer expense, in support of privately determined legal services staff objectives? Do you agree that federally funded State legislative advocates employed by legal services programs should strive to develop a political awareness that "poor people are getting screwed in Congress and what we need to do to turn that around?" Do you believe that legal services lawyers should be encouraged to do something which is prohibited to CIA agents and other Government employees—prepare dossiers on members of Congress?

Two, do you agree with the policy of the Legal Services Corporation to permit representation of Iranian students, and other noncitizens, on the theory that such taxpayer-funded legal assistance advances poor people's issues?

Three, do you support the contention of top officials of the Legal Services Corporation of Iowa, which received $2,479,781 in Federal funds last year, that:

> Current political and economic trends at the local and national levels have driven home to many the need for building and sustaining—with public funds—coalitions of people and organizations that are committed to social justice and equality.

Thus attempting to justify the commitment of Iowa legal services personnel and resources to organizing a statewide poor people's platform congress focusing on such issues as medicaid funding for abortions, ERA, and rent control?

Four, do you believe that pro-Castro activist groups like the Gray Panthers should receive taxpayer-subsidized assistance from LSC-funded attorneys?

Five, do you consider it appropriate for unionized legal services employees to participate in raising funds for the anti-American Castroite terrorists and guerrillas in El Salvador?

Six, do you favor the continued use of legal services funds to establish a lobbying presence at the State legislative level?

Seven, do you believe the provision of Federal funds for sex change operations and homosexual rights law suits are an appropriate priority in seeking to aid the poor?

Eight, do you agree with the substantial diversion of Legal Services Corporation resources to the representation of prison inmates convicted of vicious felonies, concerning the circumstances of their incarceration? Is that justice for the poor or an unjust coddling of rapists, murderers, and armed robbers?

Nine, do you believe that taxpayer funded organizations, such as the native American Rights fund program should use their resources to organize Indian land claim suits threatening the property rights of 27,000 South Carolina land owners on the basis of a sale concluded, 140 years ago, in 1840?

Ten, do you support the continued assignment of LSC funds to recipient organizations which assign policy board authority to representatives of activist groups such as the American Civil Liberties Union, Welfare Rights, the National Lawyers Guild, the National Organization for Women, and the like?

Eleven, do you consider it fair for legal services programs to aid State ballot campaigns such as the initiative for rent control in California or the drive for a graduated income tax in Massachusetts?

These are just a few of the questions which your constituents—the true stockholders of the Legal Services Corporation—can properly ask of you, who by virtue of your control of the purse strings are the actual trustees of the Legal Services Corporation.

PREPARED STATEMENT

I urge you to conscientiously review the manner in which this statutorily unauthorized program has been conducting its activities with the money you have appropriated.

Your decision to provide additional financing, in the absence of the kind of structural change proposed by President Reagan, could only be interpreted as signifying your endorsement of the extremely serious abuses which I have touched upon this morning.

Thank you.

[The statement follows:]

STATEMENT OF HOWARD PHILLIPS

Mr. Chairman, and members of the Committee. My name is Howard Phillips. I am National Director of The Conservative Caucus, Inc., a non-partisan grass roots citizens organization. Thank you for affording me the opportunity to testify in support of President Reagan's recommendation that no further Federal authority or funding be provided for the Legal Services Corporation.

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economic trends at the local and national levels have driven home to many the need for building and sustaining (with public funds) coalitions of people and organizations that are committed to social justice and equality", thus attempting to justify the commitment of Iowa legal services personnel and resources to organizing a "statewide poor people's platform congress" focusing on such issues as Medicaid funding for abortions, ERA, and rent control?

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8. Do you agree with the substantial diversion of LSC resources to the representation of prison inmates convicted of vicious felonies, concerning the circumstances of their incarceration? Is that justice for the poor or an unjust coddling of rapists, murderers, and armed robbers?

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10. Do you support the continued assignment of LSC funds to recipient organizations which assign policy board authority to representatives of activist groups such as the American Civil Liberties Union, Welfare Rights, the National Lawyers Guild, the National Organization for Women, and the like?

11. Do you consider it fair for legal services programs to aid state ballot campaigns such as the initiative for rent control in California or the drive for a graduated income tax in Massachusetts?

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Your decision to provide additional financing, in the absence of the kind of sructural change proposed by President Reagan, could only be interpreted as signifying your endorsement of the extremely serious abuses which I have touched upon this morning.

At the request of the House Judiciary Subcommittee
on Courts, Civil Liberties, and the Administration of Justice

"FIRST AMENDMENT RIGHTS ARE SUBVERTED BY THE LEGAL SERVICES CORPORATION'S SUBSIDIZED PROPAGATION OF IDEAS."

"...to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical."

Thus wrote Thomas Jefferson, author of our Declaration of Independence, in 1777. This fundamental Jeffersonian principle of civil liberty was adopted in 1786 by the General Assembly of Virginia, and was incorporated in the First Amendment to the Constitution of the United States on December 15, 1791.

Yet, since the mid-1960's, first through the Office of Legal Services at the U.S. Office of Economic Opportunity, and now, by means of the Legal Services Corporation, Congress has compelled me and millions of other Americans to furnish contributions of money, through the Internal Revenue system, for the propagation of opinions which we disbelieve and abhor.

Through a nationwide network of private legal services organizations which are publicly subsidized, yet authorized, through lobbying, publication, litigation, as well as by the organization and representation of special interest advocacy groups, to propagate the ideas of the officers and employees of such subsidized organizations, the liberties of all Americans are abridged, the pluralism and independence of private institutions and relationships are encroached upon, and both the accountability and the significance of our electoral process are fundamentally undermined.

Each of the more than 320 private, Legal Services Corporation-funded staff attorney recipient groups is governed by a self-designated, self-perpetuating policy board. Some of these boards are constituted, at least in part, by the assignment of positions to representatives of various private groups which are heavily involved in the propagation of political ideas. In all cases, private citizens on these recipient group policy boards are given authority over significant amounts of funds, collected from the taxpaying citizenry.

Even excluding litigative activity, Legal Services Corporation-funded groups propagate opinions and policy objectives, through the personnel which they hire and the funds they expend, in a variety of ways, including organizational and representational assistance to private idea advocacy groups--not merely to individuals.

In the name of "community education", they proselytize, through various media, for social change.

Advocating "law reform", they promote, at public expense, their privately held notions of sound public policy, which they strive to enforce through direct and indirect lobbying, coalition formation, legislative and administrative rule drafting, test case litigation, and related activities.

Assistance to "direct action" offensives, which include picketing, demonstrating, withholding rent payments, as well as other forms of civic protest is another aspect of Legal Service Corporation dollars being used to propagate opinion.

Nor ought we overlook the significant political impact which results from the indirect economic assistance furnished by LSC-recipient programs which aid private advocacy organizations in the pursuit of Federal grants and contracts.

And, of course, litigation is another basic policy advocacy technique available to legal services programs, their policy board members, attorneys, and support personnel.

The economic structure of a legal services delivery system based on the "staff attorney" concept particularly lends itself to the use of program dollars to further ideological objectives. The "staff attorney" structure is provider-oriented, not consumer-oriented. That is to say, it is the attorneys and program officials, rather than the clients, actual or potential, who are economically empowered to determine priorities for emphasis and for action.

"He who pays the piper calls the tune." If a service such as the provision of legal representation is "free", or carries no economic penalty, then the demand for that service is potentially without limit. The limits on provider activity which, in a free market, are imposed by potential service consumers establishing priorities on the disposition of their finite resources (which disposition may give a higher priority to food, clothing, shelter, or medical care) are, in a controlled market of service providers with incomes fixed and assured without reliance on such specific consumers, determined by the providers themselves, rather than by the potential clients.

The practical consequence of this economic reality is that legal services programs are economically at liberty to choose their causes, their clients, and their actual cases. Whether such choices are well made is a separate and significant consideration. That they are made is beyond dispute.

No system can operate without some form of constraint. Absent the checks and balances flowing from the free market principles which undergird the fee for service arrangements of the private bar, controls, either implied or expressed, either random or consistent, distant or proximate, are inevitably applied through some form of regulation.

But given the involvement of this program with the propagation of a policy ideology on the nature of and solutions to the problems of poverty, no such regulation can be applied in such a manner as to satisfy the competing claims of clients, attorneys, program grantees, members of Congress, taxpayers, and others who have some stake in any such activity which is governmentally sponsored.

Nor can such a structure lacking any inherent economic constraint accomodate the legitimate concerns of those citizens who (when sued by lawyers free of the mundane limits which cause private attorneys and those who pay them to think twice before suing, appealing, or otherwise commiting resources to a cause concerning which the outcome is uncertain) must themselves seriously consider conceding their interest at law without a contest, simply to avoid economic ruin at the hands of adversaries whose resources have no economic boundaries.

Another structurally inherent "First Amendment" problem which arises from the present system of delivering legal services to the poor, is the facility with which ostensibly unrelated, but actually interconnected grantees, policy boards, attorneys, and support personnel are able to coordinate their efforts throughout the United States, identifying favorable jurisdictions in which actions can be initiated and test cases pursued.

In 1980, a total of less than $100 million in subsidies was disbursed to the three principal candidates for President, our highest public office. Yet $300 million went to the groups which are privately involved in idea propagation under the rubric of the LSC.

Given the nature of the legal services program, and the fact that there will always be more causes and clients for a free service than there are hours in the day, it is hardly surprising that legal services spokesmen frequently conclude that the promotion of radical social, economic, and policy changes, affecting the poor as a class, is a far more efficient way to expend resources than by scattering them on uncoordinated individual causes which may not lend themselves to policy groundbreaking.

As stated by Steven Haberfeld, a planner for the National Economic Development and Law Center, a California-based Legal Services program which received $393,669 last year, "What is disheartening about the individual case work is that nothing really changes...Agencies may settle a case to avoid a costly battle, but the status quo is preserved. Meanwhile, the client is in no better position to fend for himself. If anything, he or she becomes increasingly dependent.

Haberfeld, writing in Clearinghouse Review, published in behalf of the Legal Services Corporation, continues: "We try other litigation strategies. We try law reform on behalf of a class of the afflicted. We hope to change the conditions of hundreds and thousands at the same time." But, Mr. Haberfeld gravely notes, "The vested interests which are firmly lodged in appropriate legislative and administrative circles ensure that conditions return to the status quo ante."

The answer to this frustrating inability to totally remake society so that it will conform to Mr. Haberfeld's notions of the public interest requires, in his words, that legal services programs "be aligned with political and social interest groups that begin to develop and exercise political influence of their own?"

Haberfeld also encourages "strategies of community education advocacy, legislative initiative and coordinated litigation" to further his view of what is good for the poor as a class. "Forming statewide coalitions", he says, "must be part of this effort to create an effective social base...Statewide legal services programs often have highly developed, centralized research capabilities, litigation support units and established relationships with the news media and urban based, progressive, statewide organizations (e.g., labor, Council of Churches, League of Women Voters)."

And, to conclude my excerpts from Mr. Haberfeld, consider closely his observation that "Six tools are at the program's disposal: research and analysis, media coverage, community education, agency advocacy, litigation, and drafting and promoting legislative initiatives. Legal services programs", asserts Haberfeld, "have the staff, the organizational resources, the expertise and the mandate to make a concerted effort to use all of these measures."

Note his use of the word "mandate". But what of the mandate of the First Amendment, of our political process, and of our recent election? Shall all those be subordinated to the power we have vested in the Legal Services Corporation to remake society?

Legal services attorneys have views on virtually every subject. The National Veterans Law Center, another LSC-funded organization, is actively engaged in upgrading dishonorable discharges from the armed forces. "(A)s part of a settlement of a lawsuit brought by NVLC's outreach organization", the Department of Defense recently "agreed to spend hundreds of thousands of dollars to advertise on major radio stations in November 1980 and February 1981 the existence of a post office box from which veterans can obtain information about obtaining an upgrade in discharge", it is reported.

Furthermore, "(v)eterans who write to this contact point will receive applications forms (sic), instructions, and referrals to local LSC-funded offices and community based veterans organizations that can assist them in obtaining an upgrade."

On the subject of abortion, in which the Legal Services Corporation has been heavily involved, despite legislative attempts to restrict such activity, the National Center on Women and Family Law, a $167,500 Legal Services Corporation recipient organization, maintains that "(t)he most devastating legal development for women in 1980 was the Supreme Court's decision upholding a congressional prohibition against the use of federal funding for abortions."

It is the further contention of this supposedly poverty-oriented Legal Services Corporation support center that ERA ratification is a prerequisite to winning the War on Poverty. Indeed, this January those ladies, in a taxpayer financed publication, argued that "(t)he economic boycott against nonratifying states has been vindicated in the context of the ERA as a tool for women's advocates."

In the same publication, these "Women and Family Law" legal services activists warn against possible Congressional action on the Family Protection Act which, horror of horrors, would "encourage restoration of the family unit, parental authority and a climate of traditional morality."

Other legal services lawyers also have a view of "poverty law" which might be regarded as inappropriate by the working American taxpayer. For example, when so many Americans are having trouble making ends meet, why did the Idaho Legal Services program, which got $984,000 in Federal funds, concern itself with opposing deportation proceedings against a citizen of Iran in the United States?

Why was it a "poverty issue" for the $3.9 million Texas Rural Legal Aid program to involve itself during the 1980 election campaigns in a dispute over the apportionment of Texas legislative districts?

By the same token, ought convicted felons who are incarcerated be the subjects of extensive litigation by Federally funded poverty lawyers, at a time when law abiding taxpayers, of diverse economic circumstances, are deprived of many of the material luxuries which government subsidized jailhouse lawyers pursue in behalf of their criminal clients? Ask that of the $791,000 Legal Aid Society of Columbus, Ohio which was hard at work last year on such matters as "inmate idleness" and inadequate "recreational services".

Ellen Josephson, Director of the LSC-funded Access to Justice project of the National Legal Aid and Defender Association, says "effective representation of legal services clients on access issues must go beyond the judicial forum and recognize the key role of the United States Congress."

And, in her view, the scope of such representation must be far-reaching. "The most politically controversial access issue of the 96th Congress," Miss Josephson has asserted, "was the effort to remove by statute all federal court jurisdiction over school prayer issues...If the forces seeking to eliminate school prayer jurisdiction succeed, they are likely to move on to other issues more directly affecting the poor, including abortion and school desegregation."

Whatever the issue, be it OSHA, busing, transsexual benefit claims, quotas, election law, expunging arrest records, private schools, conscription, economic policy, and even national defense, the poverty lawyers are being subsidized at public expense to propagate their private views of what is good for the poor and what is good for the country.

That is just part of what they do on taxpayer time. It can also be argued that because of the Federal patronage without which legal services personnel would not be assigned to particular areas, many other kinds of questionable activity occur, sometimes with seeming encouragement from the leaders of the LSC.

Out of the entire nation why, for example, has the Legal Service Corporation named Salvadore Tio as its Regional Director for the New York and Puerto Rico region, despite Tio's July, 1979 conviction for criminal trespass on U.S. Navy property in Vieques, Puerto Rico, in connection with an organized protest against the American naval presence on that island?

The notion of poverty as a class problem variously manifested, rather than an individual or family condition, a badly flawed concept, is fundamental to the Legal Services program. Every local legal services recipient organization is structured to function as a so-called public interest law firm in which the supposed public interest, for the poor as a class, is equated with questionable political conclusions.

I and millions of other Americans question and abhor the idea that it is in the interest of the poor that a policy of easy abortion be encouraged, that abortions be taxpayer financed, and that with respect to minor children, abortions be performed without either parental notice or consent. Yet this is the prevailing ideology of the Legal Services Corporation.

I question and abhor the idea that voluntary prayer be banned from the nation's public school classrooms, on the grounds that it is in the interest of the poor to retain such a ban, yet taxpayer subsidized legal services attorneys are lobbying against the removal of such restrictions on prayer.

I question and abhor the idea that wilful, premeditated murder of the innocent cannot be made subject to capital punishment, yet legal services personnel use taxpayer resources to limit the availability of capital punishment, on the grounds that such a policy militates particularly againt the poor.

I abhor the idea that reductions in property and income taxes such as those proposed in California and Massachusetts for working Americans are being opposed at taxpayer expense by subsidized LSC recipient personnel, who regard such tax cuts as depriving the poor of access to resources to which in the opinion of such attorneys they are entitled as a matter of right.

I abhor the LSC-propagated notion that students have a property right in their diplomas and that competency testing violates the civil rights of students who are unable to meet academic standards.

I applaud President Reagan for his courageous decision to propose the abolition of this counterproductive program which has arrogated to itself the right to use public funds to propagate its secular faith in liberal nostrums of class conflict, sexual liberation, economic redistribution, and governmentally mandated equality of result.

The Corporation, by its very structure, is beyond reform. No regulation can remove the reality of its provider-based economics. No set of Presidential appointees, however conservative, can achieve necessary improvements in a program which, by law, gives present grant recipients a presumptive right to refunding, protected from discontinuation decisions based on reasons of policy.

The Legal Services Corporation is not a poor person's program, it is a lawyers' program. If the goal is merely to provide individual low income persons with legal representation, there is no need for this elaborate structure, which is so conducive to political mischief, and so violative of First Amendment rights.

If the American Bar Association, for all its whining, is unable to find from among its 275,000 members, the interest in aiding the poor which is now supposedly concentrated in 5500 legal services lawyers, why should the legal profession's lack of social conscience be laid upon the backs of taxpayers who, themselves, lack the resources to sue or lobby at will?

The fact that states will be able to subsidize from block grants the continuation of legal services projects on which they place a high priority should reassure those who are genuinely fearful that significant needs will go unmet. The idea that the Federal government is somehow more enlightened and compassionate then those who live at the state and local level, far from this city, is an elitist concept which the voters thoroughly rejected last November.

But if that is not enough, and if all that is desired is access to an attorney, then why not consider the idea of itemized, charitable tax deductions for private attorneys who agree to represent eligible low income persons. The client would thus not be limited to representation by a segregated class of professional poverty lawyers, and the coordinated ideological ambulance chasing which has been all too characteristic of the present system would be brought to an end.

America has no established church. Neither should we have an established political ideology which, immune from accountability to the public, has been unjustly propagated with hundreds of millions of taxpayer dollars.

STATEMENT OF PHYLLIS SCHLAFLY

Senator WEICKER. Thank you very much, Mr. Phillips. I think what we will do is have Mrs. Schlafly go ahead and give her testimony.

Mrs. SCHLAFLY. Thank you, Senator. My name is Phyllis Schlafly of Alton, Ill. I am a graduate of Washington University Law School and a member of the Illinois Bar and the volunteer president of Eagle Forum, a national profamily organization.

In waiting to testify this morning, we heard the testimony of the Commissioner of the Civil Rights Commission, and so it seems appropriately relevant to protest the grievance interference by the Civil Rights Commission with the civil rights of those of us who are opposed to the equal rights amendment. Under our constitutional system, States have a constitutional right to accept or reject the equal rights amendment and whatever your views on it, that is our system. It is greviously inappropriate and an improper use of Federal funds for the Civil Rights Commission to put out a propaganda pamphlet trying to get State legislatures to vote for the equal rights amendment. I vigorously protest the use of the funds by the Civil Rights Commission. They have a big job trying to help the civil rights that are part of the Constitution; they shouldn't be trying to change our Constitution.

I am here today to urge the termination of funding for the Legal Services Corporation in line with the President's request because (1) it is probably the worst and most expensive way of providing legal services for the poor and (2) its real purpose appears to be to provide jobs for radical lawyers to litigate class-action suits and to lobby legislators on behalf of special interest or leftist goals. Instead of an agency that provides legal aid, it has become an agency for lawyers' aid. The taxpayers should not subsidize or support lawyers.

Let me give you one example of the costly and offensive performance of the Legal Services Corporation.

In the pre-Legal Services Corporation days, free legal services in civil cases were provided to indigents in five counties of Missouri adjacent to St. Louis—Warren, Lincoln, Jefferson, St. Charles, and Washington—by something called the Ombudsman Foundation. It used a system called judicare: needy clients were served by lawyers in their local communities who were hired on an hourly basis, submitted their time sheets, and were paid nominal fees.

Federal funding came from the Social Security Administration, but was never permitted to amount to more than two-thirds of the judicare budget. The other one-third of the budget had to be raised privately and locally, which was done by a retired businessman and other public spirited citizens.

This program operated very successfully from 1975 to 1978. Then suddenly without warning in 1978, the Legal Services Corporation pumped funds into the Legal Aid Society of St. Louis to serve those same five counties. Legal Services was supposed to get in touch with the existing agencies first, but didn't.

The Legal Aid Society came into those five counties with twice the annual budget of the Ombudsman Foundation, and all of it was taxpayers' money. Instead of hiring local lawyers by the hour, the Legal Aid Society hired its own lawyers and a director. Naturally, this put the Ombudsman Foundation out of business.

The result was that twice as much money was spent in so-called legal services for the poor, all of it was taxpayers' money, and the new agency handled only half as many cases.

Why is Legal Services so costly? First, because it spends all Federal money and there is no accountability. Second, the lawyers hired with Legal Services funds aren't really interested in helping needy people; the lawyers are more interested in creating clients, initiating class-action suits, litigating and lobbying, to restructure society according to their own radical notions.

All the bleeding-heart talk about providing legal services to needy people is just so much rhetoric. The Legal Services Corporation is really Federal aid to indigent lawyers.

I note that the American Bar Association and many lawyers are lobbying hard to continue this agency. The proper answer to them is: Shame on you for seeking Federal handouts. Get busy and do your own charity instead of demanding that the taxpayers subsidize you. Public spirited lawyers should devote a part of their professional time to charitable work. My husband, who has been in private law practice for 50 years, has always devoted a significant share of his time to giving free legal services to indigent whites and blacks, to Catholic nuns, and to others who could not afford regular fees.

The real purpose of the Legal Services Corporation is obviously to finance radical causes. It is very instructive to read the January, 1981 issue of Clearinghouse Review, published for the Legal Services Corporation by the National Clearinghouse for Legal Services. Here are just a few examples of the extraordinary bias it reveals:

It includes an article written by the National Center on Women and Family, which received $167,500 from the Legal Services Corporation. The article calls the U.S. Supreme Court's decision upholding the Hyde amendment "the most devastating legal development for women." It calls the "passage of the equal rights amendment essential." It rejoices that Senator Laxalt's Family Protection Act is "fortunately still in committee."

The most damaging information about lobbying that has surfaced is right here in this morning's testimony of the Chairman of the Legal Services Corporation. When you wipe away all of his emotion in testifying on that subject, what he was really saying was that all he needs is the fig leaf of one letter from one legislator or one letter from one poor person and he can do all the lobbying he wants for any cause he wants at any cost to the American taxpayers. And if that is the law, the law is a farce! I think it is just outrageous that Federal agencies should be allowed to lobby with our money by the simple device of getting just one letter from one legislator or one poor person.

Thank you, Mr. Chairman.

PROVISION OF SERVICES WITHOUT CORPORATION

Senator WEICKER. Thank you very much. I have one question and will ask that you both respond to it. Assuming the fact the Corporation goes out of existence, I wonder if you might tell me how you would make legal services available to the poor?

Mr. PHILLIPS. Well, let me say first of all when you have a service which is free, the demand for it is unlimited. I have read reports variously that there is now one legal services attorney for every 8,000 poor people, every 6,000, whatever. I would argue if the service is free then you could spend as much money as could be appropriated.

In terms of providing a representation to eligible clients, I am convinced that there are conscientious members of the American Bar Association and conscientious attorneys who don't belong in the American Bar Association, who rather than require the working American taxpayer to subsidize the lack of social conscience of the ABA would be willing to contribute a portion of their time to representation of eligible clients. Also when you remove the free aspect of it, you will have a situation where as is the case with everyone else, choices will be made among food, clothing, shelter, medical care, legal services, and I think if you talk to people in the poverty community, as it has come to be called, who have not been brought to the microphone by the Legal Services Corporation, you will discover that there are priorities far greater and more significant than those of getting an attorney.

My own concern is not the cost of the program. It is the distortion which the program engenders with respect to the political process seeking to change public policy and develop reference to either the voting booth or to consumer choice, causing decisions to be made administratively, causing them to be made in the courts. One statistic mentioned was the very low percentage of cases actually go to court. I would suggest one reason for that is that the people who are sued by legal services attorneys in most cases have to pay for their own laywers and very often they find it less expensive to concede the point than to carry on litigation against an agency which has virtually unlimited resources.

If there is a desire simply to provide representation, why not do it through a tax deduction with attorneys in private practice permitting them to be client accountable and have a consumer-oriented program rather than a lawyer-oriented program in which the attorneys control the power of purchase and are able to choose among the competing demands on their time.

Senator WEICKER. So I gather your response is you feel these needs can be taken care of in a voluntary manner or, at the least, in a manner which is subsidized by allowing some sort of a tax deduction for attorney-client services.

Mr. PHILLIPS. Yes, and I would also suggest there are some 6,200 attorneys in legal services, as was mentioned by Mr. Bradley, who frequently point out that they make far less than they would make in private practice. I agree with that. I think most of them can double their income in private practice and then they can contribute a significant portion of either their time or income to the assistance to low-income individuals without requiring taxpayers who themselves might find it difficult to pay for legal representation to subsidize their activites.

Senator WEICKER. And then I gather the other way of handling this matter is having the choice rest with the poor person as to what they need the most in the sense of either their food or education or their pursuit of legal rights.

Mr. PHILLIPS. All of us have to make choices. And that should be true regardless of economic status. But in terms of genuine need, I am convinced that out of the several hundred thousand attorneys in America, there are some sufficiently conscientious to see to it that genuine needs are met.

Furthermore, under the President's proposal, it will be possible for officials at the State level to allocate portions of the block grants which he has recommended for enactment to legal services activities. If those State officials place a high priority on the value of such activities, therefore, their continuation in some form or another.

Senator WEICKER. Mrs. Schlafly.

Mrs. SCHLAFLY. Yes, I agree with that. I do think there should be some public money available at the State level where you get more for your dollar and where there is more local accountability. And that could add to raising the social consciousness of the American Bar Association and many individual lawyers.

Senator WEICKER. Senator Rudman.

SUMMARY STATEMENT OF MRS. SCHLAFLY

Senator RUDMAN. Thank you, Mr. Chairman. Mrs. Schlafly, did you research your statement yourself?

Mrs. SCHLAFLY. I received it on very reliable information. However, I do think the committee should look into it. I am not a first-hand participant in that, and I would suggest that your committee and your staff look into it.

Senator RUDMAN. Let me restate the question. Is your statement one of first impression or is it hearsay?

Mrs. SCHLAFLY. It is hearsay.

Senator RUDMAN. OK. I want to refer to page 2 of your statement. Referring to the St. Louis program:

> This program operated very successfully from 1975 to 1978. Then suddenly without warning in 1978, the Legal Services Corporation pumped funds into the Legal Aid Society of St. Louis to serve those same five counties. Legal Services was supposed to get in touch with the existing agencies first, but didn't.

You are not aware of that of your own knowledge?

Mrs. SCHLAFLY. I answered that, yes, Senator, that is hearsay.

Senator RUDMAN. So if facts were supplied to you that indicated that in fact extensive public hearings were held involving all of the people in St. Louis involved in providing legal aid to poor people, prior to any input of Federal money or Legal Services Corporation, it was only after all of these hearings and on a firm decision of those agencies that they wanted the Legal Services Corporation to supplant those activities—then you would say your statement should be amended if those are the cold and furnished facts.

Mrs. SCHLAFLY. Certainly.

Senator RUDMAN. Fine, that is a good answer, if you want to go on from there fine, but I think we may want to amend your statement. I am concerned about the Legal Services Corporation. But I am terribly concerned about the accuracy of testimony before these committees.

Mrs. SCHLAFLY. Yes, but the purpose of the testimony was to show alternative methods of providing legal services for the poor, and I think there are many. In other words, I didn't want to just come in and just be against something. I wanted to show there are alternative methods of providing legal services for the needy, and I think they can be provided at less costs, less taxpayers' cost and very successfully in alternative ways.

Senator RUDMAN. I don't disagree with your pursuit of this problem because we share some of the views, but I do frankly feel and I am going to crusade on this for the next 6 years, that I want testimony presented to me before these committees to be accurate because we have to act on it. And I will tell you that your statement there is grossly inaccurate and incorrect.

Mr. Phillips, I want to go on to ask you a few questions. Have you seen these charts?

Mr. PHILLIPS. No, I have not, except this morning.

Senator RUDMAN. Would you like to take a look at it?

Mr. PHILLIPS. Certainly.

Senator RUDMAN. Mr. Ph[illegible], have you personally been involved with the close scrutiny of fie[illegible]perations of Legal Services Corporation in Massachusetts or New Hampshire or any other State?

Mr. PHILLIPS. I am not in the position to have the kind of access of information about legal services that members of this committee can have. However, I have attempted to maintain an awareness of what is going on in the program through wide reading of the program's own publications, clips, and independent reports. Of course, when I was with the Office of U.S. Economic Opportunity, I did have direct personal contact with many of those programs and their activities.

Senator RUDMAN. Then your answer is that in terms of having a working relationship to what they do on a day-to-day basis, you truly haven't had that?

Mr. PHILLIPS. Obviously not.

Senator RUDMAN. I have. I also have serious problems with some of your testimony. I have no problems with the seven points you raised.

Mr. PHILLIPS. Senator, may I ask, do you have any problems with the accuracy of my statement or with the opinions that I have set forth?

Senator RUDMAN. I have some problems with some of your opinions. I haven't had a chance to check the accuracy of your statement, having looked at it just this morning, but if I do you will hear from me. I intend to review your statement because I think this issue is one of the major considerations this committee is going to have this year. I don't disagree, essentially, with the six or seven questions you ask us to ask ourselves because they make very valid points. But, I want to tell you that looking at this chart and from my own personal experience that Legal Services Corporation in the State of New Hampshire, which is what I am familiar with, essentially has been rendering these kind of services to individuals who are truly in need. I also want to tell you that the New Hampshire Bar Association, which in many ways is typical of bar associations around this country, has grossly, inadequately furnished services not only to poor people in civil cases but, before legal indigent funds were established in the State, for criminal defense as well. I simply want to ask you whether or not you have considered carefully whether your solution to the problem of poor people's legal services being supplied by members of the bar is realistic? Whether you have done any surveying, whether you have looked at the experience in the past, whether you really believe that or whether you think that might just be desired?

Mr. PHILLIPS. Senator, first of all let me say I am glad to know your own experience in New Hampshire corroborates these figures. I don't have the resources to undertake an independent challenge to them or corroboration of them and have less information than I would like to have because we can't afford to pay the fees which would be required of us by the Legal Services Corporation to obtain that type of information.

One of the reasons I am glad this jives with your experience is that if this is the case, then there should be no concern in your mind about adopting legislation which would exclude the types of activities which I find to be and which I believe others find to be so out of character and unjust in terms of a federally subsidized program.

What I would maintain, however, is that the very structure of the program makes it difficult to cure its problems by regulation. There is no better regulator than the free market system. Congress can pass all of the regulations it wants, but when you are dealing with a program of Mr. Bradley said 350 private nonprofit corporations, each of which has a self-designated self-perpetuating board of directors, each of which is to a very great degree independent of any kind of regulations in the past, it is not realistic to expect that Mr. Bradley is going to close down an entire program because of a disagreement with a particular action or a particular attorney or a particular policy. An attorney can always say I did it on my lunch hour, I did it after hours, I did it at the request of a client. I don't think any kind of regulations that are approved by the Congress will correct the types of abuses that I think are at least as real as the figure on this chart.

That is why I favor a free market approach to this where instead of vesting the economic power with the attorneys, you vest the economic powers with the clients. I am not wedded to any particular plan, Senator. A voucher plan, a tax-credit plan, a tax-deduction plan, revenue-sharing plan, a variation on the block grant approach, I think any of these approaches would be superior to a centralized system which presupposes the people in Washington always know what is best and always know what is just and fair than the people at the State level and a program that is premised preponderantly on the staff attorney approach.

Senator RUDMAN. Certainly as a conservative you would not disagree with the concept every American, rich or poor, must have equal access to the courts. You don't disagree with that.

Mr. PHILLIPS. I would argue that every American is entitled to his day in court. I would argue that it is not anywhere written in the Constitution that working middle-class families where both spouses are striving to help make ends meet have to pay for an attorney to take a case. And I would argue that there are far more equitable ways of dealing with justice and inequities which you raised.

Senator RUDMAN. If we don't find more equitable ways and if our hearings in this committee and other committees lead us to the inescapable conclusion that poor people need some kind of representation, that if we eliminate this program entirely, we will effectually take that away from them completely, then I take it you would approve of some sort of a legal services plan that, in fact, decentralized control in some way to insure that those abuses which are really what concern you and many people were, in fact, at least reduced or eliminated. Is that an accurate statement?

Mr. PHILLIPS. You are basically on track, Senator. My quarrel is with the Corporation. My quarrel is with the staff attorney system. If a system were developed which dispersed power, which made it less likely, the program would be manipulated by outside organizations, like the American Civil Liberties Union, the National Laywers Guild. Then I would feel much more comfortable and I would support a program that made progress in that direction. I understand, for example, that one of the witnesses you will be hearing from today is from the American Civil Liberties Union and I would simply say that they have a conflict of interest in this program in the same manner that the American Bar Association has, just as the bar is trying to get the taxpayer to subsidize their lack of social concern, the American Civil Liberties Union is trying to get the taxpayer to subsidize its causes. I have a publication called Civil Liberties Alert which is described as a legislative newsletter of the American Civil Liberties Office of Washington, in which it says the Reagan proposal to abolish the Legal Services Corporation would have a substantial negative impact on Civil Liberties' cases. Many of the thousands of cases the ACLU is unable to handle each year eventually end up at the Legal Services Corporation.

I would suggest to a very great degree the Legal Services Corporation has been carrying water, not for the poor but for people who have political axes to grind.

Senator RUDMAN. Let me interrupt at that point and say the statistics do not support that contention, Mr. Phillips. I shared your view until 4 weeks ago and decided I ought to get the facts before I made up my mind. Your facts are not accurate.

Mr. PHILLIPS. I would like to see those facts.

Senator RUDMAN. You will.

Mr. PHILLIPS. I would also appreciate it if you would seek out the information I have raised in this freedom of information request. Information about the articles of incorporation and by-laws of the various grantees, information about the grant documents, evaluation priorities, information about the policy board members and the personnel of the various programs, information about their publications, various news clippings, program reports, the State lobbyist registrations. There is no denying the State programs have registered lobbyists after legislatures. I can't give you the precise number. All I know is it is substantial.

Senator RUDMAN. I think you raise some very legitimate concerns. Let me tell you what my concern is. It was eloquently stated by the chairman about 20 minutes ago—we must insure that basic human rights are available to everyone, and in this society we live in, I'm sad to say, it sometimes takes legal representation to assure those basic human rights. Mrs. Schlafly's husband, like many lawyers, has given a great deal of his time. I did as a young lawyer; quite frankly I didn't as I became more successful in my practice. There aren't enough people who do that. I believe there must be a continuation of this program in some form. I also believe that there must be restrictions placed on the program because there is great dissatisfaction with some of the things that are being done. But we can not throw out the baby with the bath water and I believe that if we do, we will pay a far dearer price in the next 5 years than if we don't. I appreciate you both being here this morning. I find your testimony very illuminating. I disagree with some of it, but agree with other parts of it. It is going to get careful consideration.

Mr. PHILLIPS. If I may say, Senator, I am grateful for your comments because I am aware of the relationship which you had with the New Hampshire legal assistance program when you were in New Hampshire and during the time you were attorney general. Senator, I have a high regard for your comments in this area and I am encouraged that you were not wedded necessarily to the Corporation approach, or to the staff attorney approach. I am hopeful that as a result of the debate which really is occurring for the first time this year there will be significant improvement in the kind of system that we have had. In the past, the debate has been very superficial where the Legal Services Corporation has trotted out stereotypical statements trying to characterize opponents of the program, President Reagan, and others, as being somehow less compassionate or sensitive to constitutional rights than they are and not really addressing in the public forum the very real concerns that have been raised. I am grateful to you, and to you, Mr. Chairman, for the fact you have permitted us to present our views at this hearing and for the fact you are taking a second look at this. I look forward to cooperating with you in any way you consider to be appropriate.

Mrs. SCHLAFLY. Mr. Chairman, may I ask a question? Was the head of the Legal Services Corporation correct in saying that by the device of getting one letter from one legislator or one poor person, he has the legal right to lobby?

Senator WEICKER. I assume he was reciting the law under which he operates.

Mrs. SCHLAFLY. Do you think that is a good law?

Senator WEICKER. I think there probably is a great difficulty in trying to ascertain whether these matters are legitimate or done for purposes of a law suit. That is the entire difficulty with picking and choosing what a person can and can't do in court.

Mrs. SCHLAFLY. But that isn't in court, lobbying is in a legislature?

Senator WEICKER. The law is clear on the point as he recited and under the law—it is not a question of what we think, your opinion or my opinion, he carefully recited the law. If the law is wrong, change the law.

Mrs. SCHLAFLY. That is what we have——

Senator WEICKER. It could very well be, and we will hold these hearings. I am sure you will be there to testify on reauthorization. Recommendations will come forth. The problem I have right now, is that there really is not a substitute for this system. Some form of tax deduction still has the middle-income taxpayer paying. It is a different device, but, in any event, I think I would be far more comfortable with the proposition of the administration had they said, all right, we want to zero fund this program and here is what we feel the program should consist of. We don't have that before us. Clearly, I have a prejudice of believing that all persons should have equal access to the law, that the law should be equally applied. I don't have any more right because I can hire a private lawyer, than somebody who has a legal services lawyer.

There are two standards of justice, regardless of whether the reality matches the perception. That is a very dangerous perception. I would hope that through these hearings, satisfying ourselves, whatever is out there can be made better. Nobody is saying this is perfect. But right now it is an all or nothing proposition that is out there. I don't find that acceptable in any sense. Thank you very much.

We will now hear from the second panel on the Legal Services Corporation. Witnesses will include Mr. Jerome Shestack, American Bar Association; Mr. John Shattuck, ACLU, and Mr. Jim St. Martin, Burns Paiute Reservation.

At 12 o'clock I am going to have to depart and Senator Rudman will continue to Chair the hearing. Please proceed.

STATEMENTS OF:

JEROME J. SHESTACK, AMERICAN BAR ASSOCIATION

JOHN SHATTUCK, LEGISLATIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION

Mr. SHESTACK. Thank you, Mr. Chairman. I will start first with your permission. My name is Jerome Shestack. I am a practicing attorney in Philadelphia, Pa., and a member of a law firm of 150 lawyers with offices in Philadelphia and Washington. I served as a member of the House of Delegates of the American Bar Association for more than 5 years, as chairman of one of its sessions and now as chairman of the ABA Standing Committee on Legal Aid and Indigent Defendants.

In another category I served as the U.S. representative to the United Nations Commission on Human Rights, and was senior adviser to the U.S. delegation in Madrid at the CSCE conference, and was an alternate representative of the United Nations. Mr. Reece Smith, president of the ABA, is presently out of the country and is sorry he can't be here to testify himself as he has before others.

PREPARED STATEMENT

As you know, gentlemen, the American Bar Association supports the continuation and strengthening of the Legal Services Corporation. If I may submit my written testimony for the record, I will then——

Senator WEICKER. We will include it in its entirety in the record this morning.

[The statement follows:]

STATEMENT OF JEROME J. SHESTACK

I am Jerome J. Shestack, a practicing attorney from Philadelphia, Pennsylvania, a member of the House of Delegates of the American Bar Association, and Chairman of the Association's Standing Committee on Legal Aid and Indigent Defendants. I appear before you today on behalf of the Association at the request of our President, Wm. Reece Smith, Jr. of Tampa, Florida. President Smith regrets that he cannot be here personally today, but is presently out of the country.

The American Bar Association supports the continuation and strengthening of the Legal Services Corporation. The Association firmly opposes those proposals which would seek to eliminate or weaken this program. We have monitored the Corporation closely since its inception and believe it to be one of the most cost-effective and successful programs funded by the federal government. Its elimination, we believe, would cost our society far more in the long run than the amount of dollars which would be saved by weakening or eliminating it.

Learned Hand once said that, if we are to keep our democracy, there must be one commandment: "Thou shalt not ration justice." For millions of poor, the Legal Services Corporation provides access to our system of justice which they would otherwise be denied. In simple words, the Corporation makes the justice system work for our nation's neediest citizens. If our justice system does not work for all people -- if we do not fulfill the mandate of the Constitution to "establish justice" -- then our citizens will lose respect for the law and the legal system. The consequences to our society would be intolerable.

Suppose two people, one rich and one poor, come into court to resolve a dispute. Suppose the judge says, "I am going to decide this case, and decide it fairly. Now I want to hear from the rich man, and then I will decide the case." Everyone would rise up in protest and say that justice was being prostituted.

But that is what is now being proposed. To deny the great bulk of the poor access to legal assistance is effectively to deny them a voice when they are involved in a legal dispute.

This program provides civil legal services to poor individuals who have problems which are relatively simple and routine in a legal sense but which have enormous impact on their lives -- landlord-tenant disputes, consumer matters, family law problems and the like. Through this program, problems which might fester and grow and require public assistance and intervention are resolved through the traditional justice system.

Thus, this is a program which helps solve society's problems, not exacerbate them. It is a program which produces improvements in people's lives, according to the rule of law, rather than alienating citizens from our system of justice. In short, a program which builds the faith of the poor in a democratic system by demonstrating to them that equality and justice are realities, not idle promises.

These traditional American underpinnings of the Corporation's program are important. It is therefore highly reassuring to us to see, from the Corporation's past history, that it is carrying out its objectives in an efficient and businesslike fashion. The Corporation is operating with an administrative overhead rate of less than 3%. The attorneys employed by Corporation-funded programs are paid an average starting salary of $14,971, substantially less than the starting salaries paid to attorneys not only in the private sector but also in the public sector, and this disparity in compensation may be found at all levels of experience and responsibility. These programs have also been extremely innovative in utilizing the services of non-lawyer "paralegals," in developing standardized pleadings, in streamlining intake and interview processes, and in otherwise increasing the cost effectiveness of their operations. Indeed, the private bar has often learned much from legal services programs in how to reduce costs and increase efficiency.

Those who have advocated abolition of the Corporation say that the legal needs of the poor will be met by increased funding support from state governments and by the pro bono contributions of the private bar. The states are unwilling and the private bar unable to meet more than a small percentage of the legal needs of the poor. Abolition of the federal program will effectively deny access to justice for millions of the nation's poor.

Why cannot we rely upon the states? First, because historically the states have never viewed this as their responsibility. Currently, for example, only about 1% of the funding for civil legal services for the poor is being provided by the states. There is no indication that the states are prepared or willing to assume greater responsibility in this area.

Second, there are conflict of interest problems. The states are frequently the opposing party in suits involving the poor. This is because the poor are vitally affected by decisions made by the state officials, about their health, housing and income. It has been said that the poor are the most regulated, the most "bureaucratized" segment of our society, and the legal problems they have reflect this fact. It cannot be expected that most state governments will readily provide substantial or even adequate funding for such legal representation.

I might add that the block grant funding approach suggested by some seems an unlikely source of financial aid for this program. The other federal programs proposed for block grant treatment are ones in which the states have existing efforts of their own and in which they have traditionally assumed responsibility. Indeed, most of the states have their own agencies which are working in these areas. It is unrealistic to expect the states to use the very limited block grant dollars to fund independent legal services programs instead of their own agencies administering programs which they have traditionally assumed as a state responsibility.

I would also note that the Administration has recommended that no Legal Services funding be folded into the social service block grant "pot". Given the historical and inherent reluctance of the states to become involved in this area, the "zero funding" message telegraphed by the White House will likely be met with a resounding chorus of "zero funding" responses from the governors' mansions.

It has also been suggested that the functions performed by the Corporation's programs could be performed by members of the private bar on a voluntary basis. Such suggestions are unrealistic. They fail to note that the private bar is already providing a substantial amount of free legal services to the poor and has been for many years. The first formal legal aid society was founded over one hundred years ago by lawyers in New York. The ABA legal aid committee which I now chair was established in

1920, with Charles Evans Hughes, later Chief Justice of the Supreme Court, as its first chairman. I would like to quote a passage from a speech made by Mr. Hughes at the 1920 ABA meeting at which the Committee was formed, because it speaks forthrightly to many of the issues we are considering today:

> "The necessity for organization to give this assistance should not be attributed to any general lack of desire on the part of members of the Bar to help the poor, but springs from the conditions which exist in our great cities. We are glad to recognize it as a part of professional duty to assist the helpless and oppressed, and you may find lawyers in every jurisdiction who give a large amount of their time in advising those who cannot pay.... The congestion of population affords opportunity and cover for myriad wrongs against the poor, and the high-minded practitioner moves in a world to which those most in need are utter strangers; the poor are victimized on every hand and they know not to whom to turn, while those who would prey upon them and make their misfortune a source of illicit gain are always on the watch for opportunity. The members of the Bar who are most likely to recognize professional obligation to the poor are rarely so circumstanced that they can give aid without a waste of effort which suitable organization would render unnecessary; and, while their sporadic efforts would furnish relief here and there, as chance might offer, a multitude would continue to suffer without redress. It is safe to say that the 34,000 applicants whose cases were considered last year by the Legal Aid Society of New York would, for the most part, have gone without the advice to which they were justly entitled had it not been for organized legal aid. Moreover, the wrongs of the poor fall into well-defined classes, and the attorneys for the legal aid societies acquire a wide knowledge and an efficiency in dealing with these cases which enable them to give a service at the offices of the organizations which could not be duplicated by the best law firms in the city. The lawyer in a great city best discharges his obligation to the poor, not by attempting to deal with matters to which his experience is foreign, but by supporting the legal aid association."

Between 1920 and 1965, our Association worked diligently to foster the growth of legal aid societies -- and indeed, their numbers grew from 33 in 1920 to 248 in 1965.

But by 1965 it had become apparent to everyone that these voluntary efforts, which significant, would never meet more than a small percentage of the legal needs of the poor. We cooperated with the Office of Economic Opportunity that year to bring about the creation of the federal legal services program, and we have supported it ever since.

The establishment of a federal program has not dried up the private bar's voluntary contribution; to the contrary, the Corporation's existence has stimulated and facilitated the provision of pro bono legal services to the poor, providing a means by which client needs and attorney expertise can be more easily matched. This represents a unique and, in my view, highly desirable effort which blends public and private sector initiatives into a productive whole.

Our Association, under the leadership of President Reece Smith, has been making a major effort this past year to increase the involvement of the private bar in this area by encouraging additional bar associations to establish formal pro bono components aimed at the civil legal needs of the poor. We have made grants totalling over $140,000 to 17 state and local bar groups to assist them in this effort.

But, the private bar efforts are needed in combination with the efforts of the Corporation, each encouraging the other, if we are to address meaningfully the legal problems of the poor. To eliminate the federal role in joint endeavors between government and the private sector would have a devastating effect. It would carry us back to the situation that existed prior to 1965, the year the first federal legal services program was created, in which, despite the efforts of the private bar, the great bulk of the legal needs of the poor were unmet.

But, apart from the practical limitations of expecting the private bar to meet all of the needs, any such expectation is not consistent with the obligations of our American system of justice. Ensuring justice is a public responsibility which should be born by all our citizenry and not taxed against one group or one profession. In the American system, the rights secured by justice should not be subject to political bargaining or the calculus of other interests. Our Constitution places the duty "to establish justice" even ahead of "domestic tranquility."

This Committee is faced with an enormous task in seeking to trim waste and reduce federal spending. If it decides that each government program must be cut back a set percentage to achieve the goal of a balanced budget, then obviously the Corporation will be proportionately affected. But, if this Committee uses a selective approach, as we are confident it will, carefully examining each program and cutting only those where there is waste, mismanagement, inefficiency, and limited or dubious public purpose -- then we believe the Corporation should not be touched. We have here virtually a model program which supplies services with an absolute minimum of administrative cost and bureaucratic structure. It is continually adapting its methods to effectuate the most efficient methods of delivering legal services to the poor. It is highly aware of the urgent need to provide access to justice for poor citizens of this country through various types of delivery systems, including systems involving the private bar. It seeks to develop programs particularly suited to the geographic areas involved, and to the needs of the poor. It has developed and is continuing to develop a variety of programs to carry out its functions.

A cut of any size in the program will be a reduction not of fat but of services to our nation's neediest citizens. Such a cut would not only cause a loss of services to those citizens, but would undermine their belief in the fairness of our justice system and our society generally. That is a cost which we view as far too great to justify the very limited budget saving.

Our nation and our values will never be served by rationing justice. "Equal justice under law" is a goal which embodies our nation's proudest principles. We believe the work of the Legal Services Corporation helps all of us keep faith with that high goal.

SUMMARY STATEMENT OF MR. SHESTACK

Mr. SHESTACK. Learned Hand once said, if we are to preserve democracy, you should have one commandment: "Thou shalt not ration justice." I must applaud Senator Rudman's request to get credible testimony here. He is going to have to be in the Senate a long, long time to achieve that.

Senator RUDMAN. Is that true, Mr. Chairman?

Senator WEICKER. I am afraid I would agree.

Mr. SHESTACK. Mr. Howard Phillips, for example, has been lying about the Legal Services Corporation for so long that I think he actually believes it now. In response to a question to you about would he be content to deal with the abuses. Of course there are abuses in the program. He said yes, but in his testimony he says in support of zero funding of the Legal Services Corporation, and when Senator Rudman asked him do you believe every citizen should have equal access, he fudged on it. It was a dissembling answer, he said every man should have his day in court, like every dog should have its bite. It was a hostile, antagonistic answer and what he has said is he abhors using tax money, because he thinks it is a violation of his first amendment right, I read his earlier testimony, for legal services. Now what is it he abhors? He abhors access to justice, he abhors vindication of rights, he abhors holding officials to the law? If those are the kinds of things he abhors, then I find that kind of a person pretty abhoring myself because our American system is built on justice. He said there is no constitutional right. He hasn't read his Constitution very well. We do talk about justice. In fact justice is put ahead of domestic tranquility in the Constitution. If a nation doesn't provide justice to its citizens it is not going to govern very long. I have seen that in the United Nations time and time again. We take our rights seriously in this country. Congress takes its rights seriously. They pass laws and rights come from the law. Disorders come from violation of the law. If people don't have access to the law and they have to go into self-help and on the streets, what kind of vote are we going to have? We will have riots, people in the streets, we will have people using their own means in order to get what they think is justice. This is not a system that brings about disorder, it is a system that brings about order. Why do you think the American Bar Association is before you? Ninety percent of the members of the American Bar Association are far more conservative than you two gentlemen are. I have been in the house of delegates for 5 years, I have been active in the Bar Association for 30 years, I know the people there. When it comes to justice, I admire their commitment to justice. I may disagree with many of my colleagues on many social issues, but not on the Constitution, and not on justice, and not on the system of order, and that is what this system does.

Mrs. Schlafly said these people in this program are not interested in helping the poor and there are a lot of bleeding hearts. That is rubbish, just plain rubbish. I know the people in these programs. I have seen them come out of law school. I have hired them for my law firm after they served in legal services. They are not bleeding hearts, they are not Marxists, pro-Castro. That is silly, and I am not. I may be boasting a little but I gave the toughest anti-Russian speech that the U.S. delegation gave in Madrid this last time and I have done it in the United Nations on many occasions. That is really beside the point. The point is that the people who are lawyers helping the poor are not people of bleeding hearts. The statistics Senator Rudman had are correct statistics. The American Bar Association put together its own chart. There is about one-fifth of 1 percent in social impact cases, the rest is landlord tenant, consumer, divorce—all the kind of stuff that makes up people's lives, that drive people to frustration and alienation. They need legal services. They need to feel to have a stake in the system and that is what 99.8 percent of the program deals.

There are some impact cases, sure there are, but what is wrong with an impact case? If a landlord doesn't give a tenant notice before kicking them out, should you have to bring 500 cases rather than 1 case to establish that? That would be wasteful, that would take 500 lawyers rather than 1 lawyer to do it. I don't have to tell Senator Rudman, who was the attorney general of his State, of the value of impact legislation on cases. And if the cases are wrong, and some of them are, that is what we have courts for, they throw out bad cases. I went into OMB with Reece Smith, the president of the ABA, and this is one of the young men at OMB said: "there is a case in New York where they have some rights for tenants, the lawyers have some rights for tenants." I said what did the court decide. The court decided they had those rights. That is good, their rights were vindicated. The courts decided they had those rights. That is how our system works, but they wouldn't have gotten into those courts if they didn't have lawyers. That is the philosophy of it.

We have seen it in various areas. Let me just mention one. When Reece Smith and I went before the OMB, the young people there told us seven times they are not doing this because of the California rural legal assistance program. We hadn't even mentioned it. You know the old story about protesting too much, but that is the fact of the California rural legal assistance program. I happen to know something about it because I did go in and survey one of the counties in that program. The Bar Association does have oversight committees, and it is interested in what happens in some of these programs.

The California officials under Mr. Reagan said that there were some 260 abuses with that program, and the Federal Government worked it out so that there would be a three judge court who listened to those abuses. It included Justice Robert Williamson of Maine, Justice Robert Currie of Wisconsin, and Justice Robert Lee of Colorado. Interested, objective judges. They listened to it and when they came through they said that not one of the allegations was well-founded, that the agency had been discharging its duty in a highly, competent, efficient and exemplary manner. Some of that Sacramento group never forgot that and they are out to gut the Legal Services Corporation today. They have it on their mind because they mentioned it seven times in that one meeting. That isn't why the American Bar Association is supporting it, it is supporting it because it thinks it is a good program. Of course there are abuses, and Congress can deal with some of these abuses. If all they were really worried about were the abuses in the program, in a few months this administration is going to have control of the Board of the whole Corporation. They are going to appoint all of the members of the Board of the Corporation and they can put regulations on lobbying and put regulations on this or on that so they have a remedy.

Mrs. Schlafly and Mr. Phillips give examples. One of Mr. Phillips' examples in testimony before Congress was submitted here today. He says why should the Idaho Legal Services oppose the deportation proceedings of a citizen of Iran? When I read that I got a little outraged myself. I have been involved at one point with some of the Iran negotiations. The 3 nights before the deal was finally made, I was in Secretary Muskie's office until 1 a.m., and I watched what happened very carefully. So I looked into it and I asked a member of the ABA staff to find out who was the citizen of Iran. First of all, he was an Armenian and feared for his life if he returned to Iran. The legal services program appealed this case to the Immigration Service, requesting political asylum, which he was clearly entitled to under the law because he feared he would be murdered if he had to return under Ayatollah Khomeini's regime. Why should he be denied access to our court? Why shouldn't he be allowed to get a lawyer in that situation. How does Mr. Phillips present it, here we have Idaho way out there involved in deportation proceedings of a citizen of Iran. Do you think for 1 minute the American Bar Association would have allowed those kinds of bleeding heart causes? Who makes up the Idaho bar? Citizens from that community do.

These programs are local programs. In Connecticut, New Hampshire, the programs all have lawyers from that area exercising their local options.

I might say, Senators, that over 100 bar associations have passed resolutions in support of legal services, including the Connecticut Bar Association and New Hampshire Bar Association. If I may put into the record a list of these bar associations. I think it is very impressive.

[The information follows:]

STATE AND LOCAL BAR ASSOCIATIONS FROM WHICH RESOLUTIONS SUPPORTIVE OF THE LEGAL SERVICES CORPORATION HAVE BEEN RECEIVED AS OF APRIL 20, 1981

Arizona

Maricopa County (Phoenix) Bar Association

Arkansas

Arkansas Bar Association
Pulaski County (Little Rock) Bar Association

California

State Bar of California
Bar Association of San Francisco
Los Angeles County Bar Association
Beverly Hills Bar Association
Contra Costa County Bar Association
Monterey County Bar Association
Orange County Bar Association
Santa Cruz Bar Association

Colorado

Colorado Bar Association
Colorado Women's Bar Association
Colorado Lawyers Committee
Arapahoe County Bar Association
Boulder County Bar Association
First Judicial District Bar Association
Pueblo County Bar Association
San Luis Valley Bar Association
Southwest Colorado Bar Association
Thirteenth Judicial District Bar Association

Connecticut

Connecticut Bar Association

Delaware

Delaware Bar Association
Kent County Bar Association

Florida

The Florida Bar

Georgia

Atlanta Bar Association
Younger Lawyers Section, State Bar of Georgia

Idaho

Idaho State Bar

Illinois

Illinois State Bar Association
Chicago Bar Association
Chicago Council of Lawyers
Cook County Bar Association
Madison County Bar Association
Women's Bar Association of Illinois

Indiana

Allen County Bar Association

Iowa

Iowa State Bar Association
Cerro Gordo County Bar Association

Kansas

Kansas Trial Lawyers Association

Kentucky

Louisville Bar Association

Louisiana

Shreveport Bar Association

Maryland

Maryland State Bar Association
Young Lawyers Section, Maryland State Bar Association

Massachusetts

Massachusetts Bar Association
Boston Bar Association
South Middlesex Bar Association

Michigan

State Bar of Michigan

Minnesota

Minnesota State Bar Association

Missouri

The Missouri Bar
Bar Association of Metropolitan St. Louis
St. Louis County Bar Association
Women Lawyers Association of Greater St. Louis
Boone County Bar Association

Montana

State Bar of Montana

Nebraska

Nebraska State Bar Association

New Hampshire

New Hampshire Bar Association

New Jersey

New Jersey State Bar Association
Essex County Bar Association

New Mexico

State Bar of New Mexico
New Mexico Trial Lawyers Association
San Juan County Bar Association

New York

New York State Bar Association
Association of the Bar of the City of New York
New York Lawyers for the Public Interest
New York State Administrative Law Judges Association
Broome County Bar Association
Delaware County Bar Association
Madison County Bar Association
Monroe County Bar Association
Otsego County Bar Association

Ohio

Ohio State Bar Association
Bar Association of Greater Cleveland
Toledo Bar Association

Oklahoma

Oklahoma Bar Association
Oklahoma County Bar Association
Choctaw County Bar Association
Custer County Bar Association

Oregon

Oregon State Bar
Lane County Bar Association

Pennsylvania

Pennsylvania Bar Association
Philadelphia Bar Association
Adams County Bar Association
Cambria County Bar Association
Chester County Bar Association
Dauphin County Bar Association
Lancaster County Bar Association
Luzerne County Bar Association
York County Bar Association

Puerto Rico

Puerto Rico Bar Association

Rhode Island

Rhode Island Bar Association

South Dakota

State Bar of South Dakota

Texas

State Bar of Texas
Texas Young Lawyers Association
Fort Worth Black Bar Association
Houston Bar Association
Jefferson County Bar Association

Virginia

Peninsula Bar Association

Washington

Washington State Bar Association
Washington State Bar Young Lawyers Association
Loren Miller Bar Association

West Virginia

West Virginia State Bar

Wisconsin

State Bar of Wisconsin
Milwaukee Young Lawyers Association

Wyoming

Wyoming State Bar

Mr. SHESTACK. You are dealing with conservative lawyers all over the country. The bar as a whole is not a liberal organization, but they are committed to the Constitution. Now the question is why can lawyers do all this themselves, let us just do it pro forma. In 1965, before we had a legal services program, the total amount for legal services throughout the country was $5 million. We now have over $300 million. There is no way the bar could do it alone. The bar does have a duty to provide legal services, pro bono legal services. It is only together with this program that you can get up to minimum access. I spent probably 30 to 40 percent of my time in pro bona matters. It is a mild displeasure for some of my many partners, but I bring in a lot of clients so it works out OK.

I find lawyers all over the country spending a good bit of time on pro bono services, not only for legal services. There are all sorts of pro bono causes, you help your church, synagogue, you help a small theater group, environmental group, there are dozens and dozens of ways of pro bono services. Lawyers don't do enough but they do a great deal. This is not their obligation, it is an obligation to the poor. We don't say builders go build houses for the poor or newspaper publishers could supply newspapers for the poor. There is no reason why lawyers alone should have that obligation. They have a citizens obligation to help, they are helping. The American Bar Association is now engaged in a pro bono program to encourage lawyers throughout the country to increase their pro bono services.

Senator WEICKER. Excuse me, I am going to have to now turn over the gavel to Mr. Rudman. I didn't want to leave without saying it is a heck of a statement. It really is. Both in your factual presentation and in your characterization of some of the other testimony. I felt just as you did except I hope that the American Civil Liberties Union is proud of the fact that I try to run a balanced hearing because I think it is important. Believe me I think that is what we are all fighting for. Everybody's point of view is important.

I think what I am especially proud of is in the past a lot of times you get pronouncements from the American Bar Association delivered from on high but nobody is out there doing the nitty-gritty spade work to make those pronouncements realities. On this issue I have seen the

American Bar Association out there fighting for it with their membership all over this town by testimony such as yours. I am very proud of the American Bar Association; I certainly am with the way they tackled this question.

Mr. SHESTACK. Thank you, Senator. One of the most encouraging things I have heard is when you said 6 weeks ago you felt otherwise but you changed your mind as a result of facts, that doesn't mean you are endorsing the whole program but you see the need. There are so many good lawyers in the Senate and in the House, along with other intelligent persons who are not lawyers that really what we hope is that by presenting the facts they can change their mind. Because it really shouldn't be done on the basis of bleeding heart type of statements. Ms. Schlafly referred to stripping away the fig leaf of rhetoric. If you strip away the fig leaf of emotional jargon, she really had no facts and what facts she had were wrong. At least some of them were wrong and that is true of Mr. Phillips also. I mentioned one on Iran. Another statement he made in his testimony, stated that one of the legal services projects included information about legislation to remove Federal court jurisdiction over school prayer issues, and he seems to conclude from this that the taxpayers are supporting lobbying against school prayer.

One of the programs has a bulletin dealing with the status of various legislation, and reported on the school prayer legislation because it was part of legislation dealing with issues of Federal jurisdiction. If you change the Federal jurisdiction, then you change your various areas of access to the court, for better or worse. And that is what it comes down to.

Another situation he sees in his testimony, legal services, are heavily involved in abortion even though they are not allowed to do that. Well, I looked into that, too. The legal services program may not involve itself in various types of abortion where they are not medically necessary abortions, but may where it is a necessary medical abortion. We have records of well over 1 million cases in the past year. There are 10 cases that involve abortion. It couldn't have been very heavily involved, and some of those, undoubtedly, are the type of abortion that they are allowed to be in. Maybe they were allowed in two or three abortion cases they shouldn't be in. Those lawyers should be properly rebuked for doing that. I rebuke lawyers in my law firm when they do something wrong. I have been rebuked by seniors myself. That is the idea of a professional system, to hold people up to professional standards, but to say they are heavily involved in abortion is just an out and out fabrication.

Then he seems to think that the prevailing ideology is Marxist or pro-Castro. Since when are the Gray Panthers pro-Castro. The Gray Panthers being pro-Castro or the ideology being Marxist? I have known a lot of lawyers in the legal services program. I suggest Mr. Phillips probably does not. Then he sees that legal services is responsible for all sorts of things like OSHA, Voting Rights Act, and so on. He has asked a lot of questions here today and if you look at those questions they are almost all based on fabricated facts. You don't have an incredible testimony. He is often cited in the press because they don't have anyone to cite. Really when you stop and think of it, why should anyone be against legal access for the poor? You may be against the abuses, you may have to trim a budget in a tight year, but to be against the concept has to be some type of aberration. I spent much too long, Senator. There are others here who have strong points. I really appreciate your development.

Senator RUDMAN [presiding]. We really appreciate your opinion in representing the ABA. I share the chairman's view. You often have not taken positions of followthrough. We do have a limitation of time because of the chairman's schedule and my own, so could we move on to Mr. Shattuck?

STATEMENT OF MR. SHATTUCK

Mr. SHATTUCK. I will be as brief as possible, Senator Rudman, in part because what we want to add to the hearing this morning has been said very eloquently by the chairman, and by you, Senator Rudman.

The basic issue here is that the legal system must be accessible to everyone in this country, without regard to their means or station in this society. I think the perception of citizens to enforce their rights through a legal system has given this Nation stability. As a number of other witnesses have pointed out, encouraging citizens to participate in a legal system and resolve their disputes through established institutions should be the goal of anyone committed to promoting social order and justice, regardless of their political affiliation and philosophy.

If a large part of our society begins to perceive that the legal system operates only for those who can afford it, and the poor begin to find their rights can no longer be enforced because they can't have access to the legal system, clearly the promise of equal justice on which much of our history is founded will become a hollow one.

The right to a lawyer is really critical, the critical element in a sense in providing full and equal access to our legal system. The Supreme Court, as we all know, has held that the right to counsel is constitutionally mandated in criminal cases. The complexity of civil matters raises the same question about the requirement that counsel be provided in such a manner, even though the Supreme Court has not itself yet addressed that question and determined that counsel is constitutionally mandated in civil matters. We are not arguing that point here today, but certainly pointing out a similarity between the complexity of criminal cases and civil cases.

We believe that the right to counsel is in essence a basic necessity of life. And when such access is denied to a person because of indigency, rights afforded by the Constitution are effectively denied to that person. The Supreme Court has pointed out that:

> Governmental benefits necessary to basic sustenance have often been viewed as being of greater Constitutional significance than less essential forms of government entitlement.

From this point of view, Senator Rudman, we feel that abolition of the Legal Services Corporation would clearly be an insidious discrimination against the very poor in terms of their inability to obtain access to the legal system.

I think the dimensions of this discrimination are starkly demonstrated by the fact that access by indigents to the legal system, which is arguably a constitutional right, would be cut off entirely while no similarly sweeping cuts would be aimed at other Government benefit programs which do not involve constitutional rights.

Mr. Chairman, the legal needs of the poor, I think, are barely being met at the present. I think there has been a great deal of testimony from the Legal Services Corporation on that point and the question of what the ratio is of lawyers to persons who are entitled to receive legal services because of indigency is 2 to 10,000 even under the circumstances which you set up today.

I think on this point, I would like to respond directly to one of the assertions made by Mr. Phillips. His assertion to those who want to abolish legal services, that the private bar and private organizations like the ACLU can fill backlogs is absurd. We are one of the organizations upon which this burden would fall. I would say parenthetically if we have a conflict of interest in appearing here today because we support the Bill of Rights in much the same way as any other lawyer who appears before a court of law, whether it be a Legal Services Corporation lawyer or a lawyer who is privately paid, also is required to support the Bill of Rights, then we are willing to stand accused of being in conflict of interest, but I think that is clearly stretching the point in the most absurd kind of way.

Most of the private organizations which provide legal services to the poor simply cannot bear the burden which is demonstrated by the kind of ratio of availability of legal counsel per indigent person per 10,000 indigent persons as has been shown to you by the testimony of the Legal Services Corporation.

The overwhelming number of ACLU cases are handled by private attorneys on a pro bono public basis. While there is no question that the private bar, the American Bar Association, of course, has a deep commitment to providing legal services to the poor, the combined efforts of the private bar and federally funded legal services cannot possibly meet all the legal needs of the poor today. We are not asking for additional funding or anything of that kind, but I think the circumstances that face the poor with respect to access to justice in terms of the figures that have been cited to you and which no one has disputed clearly demonstrate that is not the case.

As to Mr. Phillips' proposed tax break proposal, I think this totally ignores the need for specialization and efficiency in the delivery of legal services and in many respects it is an insult to both the poor and to the private bar. Clearly there ought to be the kind of specialization in delivery of services with respect to those who are indigent as there is with respect to those who are not indigent, even though it is clear there may be more services delivered to those, in fact, who are not indigent because of their ability to pay.

As far as the specific charges that have been leveled against the Legal Services Corporation is concerned, I would like to address the assertion by both Mr. Phillips and Mrs. Schlafly that Legal Services Corporation attorneys are engaged in social engineering and law reform. These charges, in our view, really have no basis in any fact we have heard presented before the committee.

The Legal Services attorneys only represent their clients under canon 7 of the Code of Professional Responsibility. They are under an ethical responsibility to represent their clients "zealously within the balance of the law."

I think what critics often call law reform in this area is in reality the enforcement of existing common law, statutory and constitutional rights which those critics may, in fact, find not suitable or proper from their own point of view.

On the other hand, the daily life problems of the poor, I think, have little to do with law reform or even with constitutional claims. They involve extensively landlord-tenants' disputes, divorce issues, the range of mundane but compelling problems which often require legal services.

I think in the final analysis, disagreement over the Legal Services Corporation is not so much over the principle of representing poor people as it is of the underlying laws and rights being enforced, the interpretation the courts have given them and the obligations attorneys face in representing their clients zealously within the bounds of the law.

We think abolition of the Legal Services Corporation, is a callous, discriminatory, and ineffective response to disagreements over what the law should be.

Finally, we urge the subcommittee not to view the legal services delivery program as simply another social welfare program. Cutting off the poor from access to the administration of justice is dangerous as a matter of social policy and discriminatory as a matter of constitutional law. The Legal Services Corporation is a program providing for the administration of justice. Congress provides these funds for judges and courts, administrative law judges and hearing examiners, and for U.S. attorneys and Federal public defenders.

PREPARED STATEMENT

Legal services attorneys are an equally vital part of our system of justice. Their elimination in our view would be unthinkable. Thank you.

[The statement follows:]

STATEMENT OF JOHN SHATTUCK

We appreciate the opportunity to present the views of the American Civil Liberties Union on the FY 82 Appropriation for the Legal Services Corporation. The ACLU is a nationwide organization of over 200,000 members dedicated to the preservation and enhancement of the Bill of Rights. Throughout its history, the ACLU has been deeply committed to the time-honored American maxim, "Equal justice under law." We therefore strongly oppose any cutback in funding of legal services for the poor or curtailment of representation by Legal Services attorneys.

Our nation was founded by people who firmly believed that we are a government of laws. Our success as a constitutional democracy is in large measure due to those sections of the Constitution and Bill of Rights which establish a legal system aimed at providing a mechanism for resolving disputes through fair and established procedures, which is equally accessible to all citizens without regard to their means or station in society.

Although our legal system is not always as equitable or responsive as we would like to it be, the perception that citizens can enforce their rights through an independent legal system has given this nation stability. Encouraging citizens to participate in our legal system and to resolve their disputes through established institutions should be the goal of all who are committed to promoting social order and justice, regardless of their political affiliation or philosophy. If a large segment of our society begins to perceive that the legal system operates only for those who can afford it, and the poor begin to find that their rights can no longer be enforced, the promise of equal justice will become hollow. Without access to the legal system, rights guaranteed to each and every citizen become meaningless. The Constitution establishes a system of law for all, but without legal representation, the poor will have no access to this constitutionally established system.

The right to a lawyer is the critical element in providing full and equal access to the legal system. The Supreme Court has repeatedly recognized the importance of counsel. Counsel is constitutionally mandated in criminal proceedings. Gideon v. Wainwright, 372 U.S. 335 (1963). The Court's rationale for requiring counsel in criminal cases is equally applicable in the civil law context.

> The right to be heard, in many cases, would be of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layment has small and sometimes no skill in the science of law. . . . He is unfamiliar with the rule of evidence. Left without the aid of counsel he may be put on trial without a proper charge and convicted upon competent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty he faces the danger of conviction because he does not know how to establish his innocence. Powell v. Alabama, 287 U.S. 45, 68-69 (1932).

The volumes of regulations and administrative law, the technical and sophisticated procedures of civil litigation, at least equal the complexity of criminal proceedings. If indigents are to enforce and defend their rights, they need the assistance of counsel. Access to the legal system and to the assistance of counsel is a "basic necessity of life." When such access is denied to a person because of indigency, rights afforded by the Constitution are effectively denied to that person. Since "governmental benefits necessary to basic sustenance have often been viewed as being of greater constitutional significance than less essential forms of government entitlement," Memorial Hospital v. Maricopa County, _____ U.S. _____, _____ (1974), the abolition of the Legal Services Corporation must be viewed as an invidious discrimination against the very poor. The dimensions of this discrimination are starkly demonstrated by the fact that access by indigents to the legal system, a constitutional right, would be cut off entirely, while no similarly sweeping cuts would be aimed at Medicare or Social Security or other government benefits which do not involve constitutional rights.

The Reagan administration's proposal to abolish the LSC and the Senate Budget Committee's recommendation for a two-thirds reduction in its funding will effectively deny indigents their right of access to the legal system. The legal needs of the poor are barely being met at present. The assertion by proponents of the Reagan plan that the private bar and private organizations can fill the vacuum is absurd. As one of the private organizations upon which this burden would fall, we can assure you that the ACLU resources are stretched to the limit now. Most other private organizations which provide legal services to the poor are similarly situated. Moreover, the overwhelming number of ACLU cases are handled by private attorneys on a pro bono publico basis. While the legal profession has a strong commitment to provide legal services for the poor, American Bar Association President William Reece Smith, Jr. has testified that the combined efforts of the private bar and federally funded legal services cannot meet all the legal needs of the poor today. The elimination of the Corporation will greatly exacerbate this situation.

Even a twenty-five percent cut in funding would have a disastrous effect. LSC is a remarkable agency with virtually no record of waste or fraud. Since administrative costs account for less than two percent of its budget, any substantial cut in funding directly affects delivery of legal services for the poor. If twenty-five percent is cut from the LSC budget, nearly one-quarter of the legal assistance it now provides will be eliminated. Many neighborhood, county, and rural offices would be forced to close. This would create an unconscionable situation in which, at best, indigents would have to travel long distances and wait for many weeks before being able to speak to with an attorney.

As far as the specific charges that have been leveled at LSC are concerned, other witnesses are better qualified to respond. We will, however, address the assertion that Legal Services attorneys are engaged in "social engineering" and "law reform." These charges have no basis in fact.

Legal Services attorneys only represent their clients. Under

Canon 7 of the Code of Professional Responsibility, they are under an ethical obligation to represent clients "zealously within the bounds of the law." What critics call "law reform" is in reality enforcement of existing common law, statutory and constitutional rights. The daily life problems of the poor have little to do with law reform or even with constitutional claims--they involve landlord-tenant disputes, divorce issues and the range of mundane but compelling problems which often require legal assistance. Many cases are handled at a counselling or administrative level. Only about fifteen percent of the matters Legal Services attorneys handle reach court. However, only a small fraction of those in court are "class action" lawsuits (less than two percent of the caseload). Of course, these are the cases which get publicity, but they are generally undertaken because clients with similar complaints make class actions the most cost efficient method of remedying the problem. Approximately seventy eight percent of the cases handled by Legal Services attorneys involve issues of family law, housing, income maintenance, or consumer and finance law.

In the final analysis, the disagreement over LSC is not so much over the principle of representing poor people as over the underlying laws and rights being enforced and the interpretation the courts have given to them. Abolition of LSC is a callous, discriminatory and ineffective response to disagrements over what the law should be. Nor are individual restrictions on LSC authority justifiable, since they would constitute direct interference with lawyers' representation of clients. The government would be telling lawyers that only certain legal rights are enforceable, and only if enforced in a certain way. The restrictions advocated by some are a poorly disguised attempt to limit the constitutional rights of poor people. We strongly object to these efforts and urge the Committee not to interfere with lawyer-client relationships or the constitutional rights of indigents by restricting the jurisdiction of LSC.

Finally, we ask the Subcommittee not to view Legal Services as simply another social welfare program like Medicare or Social Security. Cutting off the poor from access to the administration of justice is dangerous as a matter of social policy and discriminatory as a matter of constitutional law. The Legal Services Corporation is a program providing for the administration of justice. Congress provides necessary funds for judges and courts, Administrative Law Judges and hearing examiners, and for U.S. Attorneys and federal public defenders. Legal Services attorneys are an equally vital part of our system of justice, and their elimination is equally unthinkable.

Thank you for the opportunity to present our views.

STATEMENT OF JIM ST. MARTIN, CHAIRMAN, BURNS PAIUTE INDIAN TRIBE OF OREGON

PREPARED STATEMENT

Senator RUDMAN. Thank you very much, Mr. Shattuck. We now have Mr. Jim St. Martin, Chairman of the Burns Paiute Reservation of Burns, Oreg. Would you like to have your statement entered in the record?

Mr. ST. MARTIN. Fine.

Senator RUDMAN. Will enter your statement in the record.

[The statement follows:]

STATEMENT OF JIM ST. MARTIN

Thank you for the opportunity to appear and testify before you today. My name is Jim St. Martin. I am the Chairman of the Burns Paiute Indian Tribe, a small tribe located in southeastern Oregon. I also serve as Chairman of the Oregon Commission on Indian Services, an Oregon legislative commission with Indian representatives from throughout the State whose purpose it is to improve services to American Indians in Oregon. For the past two years I have also served as Chairman of the Advisory Board to the Indian legal services program in Oregon.

These various responsibilities have given me the opportunity to see the needs and concerns of Oregon's Indian tribes and individuals. I have been able to evaluate these concerns at both the community level and the national level. In every case I have seen, access to competent legal counsel has been both a problem and a desparate need.

My Tribe is located, as are many tribes, in a very rural setting. Trying to obtain an attorney for my Tribe was a very difficult task. First of all, my Tribe is very poor and attorneys are expensive. Second, there are approximately six attorneys in Harney County's 20,000 square miles and I found that these attorneys had clients whose interests conflicted with those of my Tribe. The nearest town with lawyers is over 100 miles away. When I did find an attorney, it quickly became apparent that he had very little knowledge of Indian law or rights.

My experience is that Indian tribes and individuals simply cannot rely on private attorneys in rural settings for the kind of legal representation they require. The ability to have our legal rights protected and insured depends in significant part on having Indian legal services attorneys who have the expertise to handle our special needs. I am not alone in this experience. The rural setting and special concerns of Indian tribes and individuals have historically made it difficult for Indians to obtain legal counsel for any but the largest of fee generating cases.

Funding for the Legal Services Corporation has allowed us to have attorneys we desparately need. In Oregon we have had this program for only two and one-half years. During that time, however, individual Indians and tribes who cannot afford fulltime legal counsel have received legal assistance for some of their needs. Without legal services most of those legal needs would have gone unmet.

I have read charges that legal services attorneys are radicals who bring cases that deplete taxpayers' dollars. I do not know much about other programs but I have seen nothing in my experience with Oregon Legal Services to support such a charge. Nor have I heard anyone who has dealt directly with this program ever make such a statement.

Some examples of work done for tribes in Oregon may be helpful. My own Tribe was recently denied the right to acquire 160 acres of land left by a deceased tribal member. He left no Will and had no legal heirs. This land, under an antiquated law, may go to the Bureau of Land Management. Unless we can convince Congress to designate my Tribe under that law to receive this land, it will pass out of tribal ownership. This is a case that generates no fee. It could be a long and expensive process relative to the result when assessed by a private attorney. Nonetheless, it is of vital concern to my people. Our land is precious to us. We view the loss of any of it with alarm. It is just such a case that legal services is assisting us with.

On a broader basis, the Indian legal services program has devoted extensive effort in working with Oregon's Tribes and the State of Oregon to accomplish an orderly implementation of the Indian Child Welfare Act. As a result, major gains have been made which will avoid unnecessary and wasteful conflict and litigation over the issues involved. As part of this effort the legal services office has conducted training for both state and tribal personnel involved with the Act at no cost to either.

This program also serves Oregon's terminated tribes. These tribes have no funds and have been cut off from any federal assistance. Without legal services they would have no access to attorneys.

You may be interested to know that the policy guidelines of the Native American Program identify litigation as an absolute last resort to solving clients' problems. Every other alternative must be exhausted before a lawsuit is filed. These guidelines were adopted by the Indian Advisory Board and the Program Director.

My Tribe, like many tribes, is suffering growing pains. We are struggling to live up to our obligations as a government to our people. We must, in that process, work with every level of national and local government. Our tribal court system is evolving from its modest beginnings to provide the kind of justice that my people can be proud of and can depend upon. We are developing housing, educational support, health services, and numerous municipal services such as police and fire protection. This requires lengthy dealings with federal programs, the Bureau of Indian Affairs, State government, and negotiations with local city officials and functionaries.

No matter how we may view lawyers individually, imagine this Congress working without them. Imagine a small town trying to function without a city attorney. It simply would not work. Yet, if you take Indian legal services away, if you fund them so meagerly they cannot function, you will deprive many of the poorest, the most needy of Indian people and tribes of attorneys they have never needed more. I urge you to continue to fund the legal services programs so important to the future of Indian people.

Mr. ST. MARTIN. I also serve as chairman of the advisory board in the State of Oregon.

I was selected by the community in which I live, as we are all members of the advisory board and we establish our own priorities. Unlike that which has been suggested earlier, we are not controlled by the Corporation. We deal primarily with the delivery of services as it affects Indian people and Indian law. Indian law, or as a specialty, unlike tax law, types of specialized law, is constantly changing both by this Congress and the State and tribes.

It is a fluid kind of thing. We have found most private attorneys have no knowledge and even if there were a volunteer tax deduction system, it could not be provided by lawyers practicing on a general basis because they have no knowledge of it.

Also to add that the native American program element within the Legal Service Corporation amounts to about $6 million, which is a fairly small amount, less than 5 percent of funds in the State of Oregon go for the native American program. They serve the entire State. Their cases have been prioritized where they enter into as many situations where they can negotiate. Much of their time has been spent in training, both State agencies, with their cooperation, as well as tribal, and working with the Federal agencies to implement various laws such as union child welfare, which is presently being implemented in the State of Oregon.

As one final comment that was made earlier, I don't believe native American rights is totally funded by legal services, if at all. And as far as the land claims settlements, I would like to say, had we had legal representation 140 years ago, this case would not have come up. It would have been settled much before this time. I think that is why all these problems have been surfacing. We are finally getting access to the legal process.

ADDITIONAL LETTERS AND STATEMENTS

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received the following letters and statements. By direction of the chairman the letters and statements have been printed in the record.]

[The information follows:]

LETTER FROM HOWARD PHILLIPS, NATIONAL DIRECTOR, THE CONSERVATIVE CAUCUS, INC.

May 1, 1981

Hon. Lowell P. Weicker, Jr.
Chairman
Appropriations Subcommittee on State,
Commerce, Justice and Judiciary
U.S. Senate
146 A The Capitol
Washington, D.C. 20510

Dear Senator Weicker:

On April 22, 1981, Dan Bradley, President of the Legal Services Corporation, in answer to a question concerning class action suits engaged in by Corporation-funded grantees, stated that less than two-tenths of one percent of all LSC cases were class actions. This "statistic" was not challenged.

As part of your oversight responsibilities, I think it is important for you to determine what percentage of LSC attorney time and what portion of the budget of each of the more than 320 LSC grantees is spent on class action suits?

As a private citizen, I do not have the resources to provide an answer to that question. The Subcommittee, however, can and should obtain this information for each grantee before any further funds are appropriated for the Corporation, provided there is an authorization in law against which the Committee may appropriate funds.

Based on the three following examples, I believe that a true accounting of time and money spent on class action suits by Corporation grantees is substantially more than suggested by Mr. Bradley.

1. The Orlando (Florida) Sentinel Star of January 27, 1981 reports that the Greater Orlando Area Legal Services (GOALS), which received $527,885 last year, had "only two class action suits out of more than 4000 cases. But the financial and manpower costs of those two class action suits ...are far greater than those of the individual cases." (clipping attached).

Apparently more than half of the $527,885 grant is being used for just two class actions.

2. In testimony in April, 1981, before the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, the county attorney of Orange County, New York, who defended the county against a class action suit brought by the Mid-Hudson Legal Services, Inc. ($581,929 in LSC funds last year) stated that Mid-Hudson spent at least 215 man days of time on that suit. This is the equivalent of more than a year of time of one person .

The Chairman of the Board of Mid-Hudson testified at the same hearing that Mid-Hudson employs only 10 lawyers. Obviously a large amount of time was spent on this one case. No one will know how many poor people with individual problems could not be assisted because of this one class action.

3. And now comes the granddaddy of all the Legal Services Corporation-funded class actions. According to Adrian Lee, Columnist of the Philadelphia Bulletin, in two columns which appeared on March 15, and 16, 1981 (attached), the Community Legal Services, Inc. (CLS of Philadelphia) ($2,277,972 in LSC funds last year) is claiming $4.5 million in legal fees for what in Philadelphia is popularly known as the Whitman Park suit involving 120 units of low income housing.

My organization has been informed by an attorney who was involved in the litigation of this case that this Whitman Park case was a class action.

The claim for $4.5 million in fees in this case indicates that at their current annual rate of funding, CLS spent 100% of their resources on this one suit for the equivalent of almost two years!

Stated another way: If the claim for $4-5 million were costed out at the rate of $100 per hour, it would mean that CLS spent 45,000 hours on this one case. This would be 45,000 hours of assistance that could have been spent solving individual legal problems of poor people. Since Legal Services attorneys are not paid at the rate of $100 per hour, it is possible that many more than 45,000 hours were spent on this case and away from individuals' problems.

Based on these three examples, I believe the Subcommittee ought to obtain from the LSC, and fully review, an accounting of the amount of time and money expended by each LSC grantee on class actions. This information should be made part of the hearing record, so that everyone may revoew it.

Any action to appropriate funds without this information will be a signal that the Committee does not really care how LSC and its grantees use the taxpayer's money.

I respectfully request that this letter and attachments be made part of the hearing record.

Sincerely,

Howard Phillips

Howard Phillips
National Director
The Conservative Caucus, Inc.

GAO Report B202116—Lobbying Activities Prohibited by Federal Law

B-202116 May 1, 1981

The Honorable F. James Sensenbrenner, Jr.
House of Representatives

Dear Mr. Sensenbrenner:

This is in response to your request that this Office investigate the possible misuse of appropriated funds by the Legal Services Corporation (LSC) for lobbying and political activities. In support of your allegations, you provided us with copies of a number of LSC memoranda covering the period from March 1980 until March 1981. After reviewing this material we have concluded that LSC has itself engaged and allowed its grant recipients to engage in lobbying activities prohibited by Federal law. However, we did not find that LSC had engaged in prohibited political activities.

The LSC memoranda indicate that LSC developed a detailed plan designed to urge members of the public interested in its legal assistance programs to contact Members of Congress and communicate their support for LSC reauthorization legislation and LSC appropriations measures being considered by the Congress. Over the years, LSC has encouraged groups interested in legal assistance at the local, regional, and state levels to support its legislative program. The organizations include such groups as LSC fund recipients; clients' councils; the National Legal Aid and Defense Association (NLADA), an organization of poverty lawyers; the National Organization of Legal Services Workers, an employee organization of legal assistance workers; migrant farm worker groups; bar associations; and similar groups. The effectiveness of the organization depends heavily on a State Coordinator to serve as link between LSC headquarters and the State organization. Normally, the State Coordinator is an employee or official of a recipient organization, as opposed to being an employee of the LSC itself. Officials of LSC's Office of Government Relations communicate frequently with State Coordinators and develop strategy about how local members of the State's Congressional delegation can best be approached, how the local support base can be increased, and how certain methods have proven successful in other states. In addition to serving as a communications link and coordinating the activities of local groups, State Coordinators are also responsible for reporting information back to LSC headquarters.

Early in 1980, LSC formed a coalition with the Project Advisory Group (PAG), a national organization of legal services programs, to direct a lobbying campaign in support of LSC reauthorization and appropriation legislation being considered by the Congress. In April 1980, Dan J. Bradley, President, LSC, and Charles H. Dorsey, Chairperson, PAG, sent a joint letter to Legal Services Project Directors, the heads of recipient organizations, initiating the lobbying efforts as follows:

> "The Legal Services Corporation and the Project Advisory Group are engaged in a joint effort to protect the interests of legal services programs and clients in current Congressional consideration of the Legal Services Corporation Act and appropriations for fiscal year 1981. We are sending this letter to bring you up to date on this pending legislation and to inform you particularly of the serious efforts in Congress to impose further restrictions on legal services work and to limit our appropriation.

"On the issue of funding, a major threat is posed by the general budget-cutting pressures on Congress and the Administration. Even strong supporters of legal services have agreed to a balanced budget in 1981. This means that both the House and Senate Budget Committees are looking more critically at funding for legal services than ever before, and could restrict the Appropriations Committees' ability to adequately fund the program for next year. You will recall that the Corporation requested $353 million for 1981. PAG is urging $403 million. The White House is supporting $321 million. Some members of the House Budget Committee proposed termination of legal services. That was not seriously debated, but a subsequent effort to reduce funds to $278 million lost narrowly by a vote of 11 to 14.

"At the time of this writing, resolutions from both the House and Senate Budget Committees would permit appropriations of as much as $321 million. It is certain, however, that further efforts to cut the budget will be made on the floor of both the House and the Senate. Such proposed cuts could be specific to legal services or could be across-the-board reductions for all spending. The budget resolutions will be debated on the floor in late April or early May.

"The House and Senate Appropriations Committees will set the actual 1981 appropriations figure for legal services once Congress has adopted the budget resolution setting the outer limits. Markup on appropriations bills will probably occur in mid to late May.

"The House Judiciary Committee and the Senate Labor and Human Resources Committee are considering bills to extend the Legal Services Corporation Act. The leaders of both Committees want a simple extension of the law, with no amendments — a position supported by both the Corporation and PAG. The House Bill, H.R. 6386, is a three-year authorization. The Senate bill, S. 2337, is a two-year bill. Both have been reported from the appropriate subcommittee and will be considered by the respective full committees hopefully before the end of April.

"We have clear indications that a number of crippling amendments will be proposed — either in full Committee or on the floor of the House and Senate. Among those now being discussed are further restrictions on legislative representation, representation in certain abortion cases, representation of aliens, and recovery of attorneys' fees. None of these are easy issues. All of them are important to effective legal services work. We must not underestimate the risk that such amendments present this year.

"Both the Corporation and PAG have added temporary personnel in Washington to better assure that the interests of legal services programs and clients are heard as these issues are debated in the coming weeks and months. * * *"

On April 3, 1980, LSC sent out a packet of materials addressed to: "Persons Coordinating Congressional Relations" that included instructions on effective lobbying of members of Congress at the local level for LSC legislation. The materials provided were as follows:

"1. A statement of 'what needs to be done' and 'what to send us.'

"2. A Legislative update of April 3, 1980, from Anh Tu.

"3. Fact sheets and background information on the LSC reauthorization and appropriation, including membership lists of the appropriate House and Senate Committees.

"4. One page fact sheet/handouts on possible restrictive amendments.

"5. Examples of supportive Bar letters and resolutions.

"6. Examples of favorable editorials.

"7. Examples of supportive letters from public officials.

"8. A list of state coordinators for the legislative effort. (State coordinators will also receive materials excerpted from the Congressional Staff Directory, indicating the Washington and local office addresses and phone numbers, and the key staff of each member of their state's Congressional delegation.)

"NOTE: PLEASE be in touch with your state coordinator before initiating Congressional contacts, editorials, or support from other suggested sources so that efforts can be coordinated among the various legal service supporters in your state."

The "what needs to be done" brochure gives specific and detailed guidance to local lobbyists. The brochure reads as follows:

"1. Visiting Members of Congress. During the Congressional recess, April 4 - 14, many members of Congress will be in their districts and can be approached by constituents supportive of legal services. For example, visits on behalf of legal services might be made by delegations of bar and law school leaders, public officials prominent figures in the party of the member, heads of major contributing organizations (e.g. labor unions), heads of broad-based constituent organizations (e.g. council of churches, League of Women Voters, Common Cause) and individual compaign contributors.

"NOTE: It is important to consider which of the above will be more influential with respect to a given member of Congress. Many members will want to hear from legal services staff themselves, but in most cases, it is better to rely on your supporters in the bar and other constituent groups to make Congressional contacts. (INSTRUCTIONS attached)

"2. Securing Local and State Bar Support. Supportive resolutions of local and state bar association and contacts by bar leaders with members of Congress are effective means of indicating concern to Congress.

"3. Obtaining Supportive Editorials. Seek editorial support in local papers.

"4. Alerting Constituents. Many Congressional constituents will be concerned about legal services if they are alerted to the problems we face. These include: local and state labor organizations; businesses and business organizations; church groups including local council of churches or statewide conferences, such as the statewide Catholic conference which exists in most states; broad-based constituent organizations (such as the League of Women Voters, Common Cause); civil rights organizations; anti-hunger coalitions; social service organizations (most states have some organization involved in the delivery of human resources); and individual campaign contributors.

"Also, client and poor people's organizations, such as the National Clients Council chapters, block-clubs, community economic development corporations, should be informed.

"5. Alerting Public Officials. State legislators, governors local legislators, and prominent individuals in the political party of the Representative or Senator may be concerned about legal services if they are alerted to the problems our clients will face if LSC's budget is cut or our services are restricted.

"6. Informing Us of Problems. Finally, it is important to determine if members of Congress or their staff have heard allegations of wrongdoing by a legal services program, and promptly provide a memorandum of fact to us along with as much supporting evidence as possible."

LSC also instructed local lobbyists in the "what to send us" brochure that they were responsible for providing LSC with after-action reports of their lobbying efforts. The data desired were as follows:

"Please provide State Coordinators and the LSC Office of Government Relations with all actual products of your efforts, including editorials, communications by individuals and organizations, and other information.

"Specifically, with regard to all House and Senate contacts please provide us with a report of:

"(1) the member of Congress (and staff) contacted,

"(2) persons (and their positions) making the contacts,

"(3) the Member's (and staff's) attitude toward

"(a) Legal services in general, and

"(b) any specific provisions of the legislation or amendments discussed, and

"(4) materials or information we should deliver to the member's Washington office."

The packet contained instructions on the preparation which supporters of LSC legislation should make before visiting their Congressmen or Senators. Lobbyists were advised to familiarize themselves with the background of the Member and select highly respected persons from the district to accompany the visiting delegation. The delegation was to familiarize itself with LSC reauthorization and appropriation issues and emphasize the significance of these issues to the Member.

The packet also included background information on the LSC reauthorization and appropriation issues. This material urged support for H.R. 6386 without amendment in the House and S. 2337 as reported out of the Senate Subcommittee on Employment, Poverty and Migratory Labor. The background information also urged opposition to any amendment that would (1) restrict legislative representation, (2) restrict the ability of legal services programs to represent aliens, (3) restrict the right of a legal services program to receive court-awarded fees upon successful completion of litigation, (4) limit the right of employees of legal services programs to join labor unions, (5) limit legal services representation in abortion proceedings, or (6) require legal services attorneys to negotiate prior to the initiation of litigation.

The packet included several examples of support for LSC reauthorization and appropriations in the form of editorials, local and State bar association letters, and letters from public officials. It was pointed out that such items had been helpful in demonstrating to Members of Congress the support for LSC in the local area.

Similar packets were sent out from the LSC Office of Government Relations and PAG to State Coordinators about once each month. These subsequent packets contained specific guidance, depending on the then-current status of LSC legislation, as to the lobbying efforts that were needed at the local level.

There is little question that the communications set forth in detail above constitute "lobbying", as the term is used in the applicable restrictive legislation and construed in our decisions. "Lobbying" activities are prohibited by provisions of the Legal Services Corporation Act of 1974, as amended (42 U.S.C. § 2996 *et seq.*) and restrictions contained in various appropriation Acts applicable to Federal funds expended by the Corporation. (See later discussions of these statutes.)

Under the provisions of 42 U.S.C. § 2996e(c), the Corporation itself, as distinguished from recipients of funding through the Corporation, is prohibited from attempting to influence the passage or defeat of any legislation before the Congress, except that Corporation personnel

> "* * * may testify or make other _appropriate_ communication (A) when formally requested to do so by a legislative body, a committee, or a member thereof or (B) in connection with legislation or appropriations directly affecting the activities of the Corporation." (Emphasis added.)

In construing the exception, we think the phrase "* * * testify or make other appropriate communication * * *" is significant. Clearly, Congress did not intend the statutory prohibition against lobbying to preclude Corporation personnel from testifying before that body nor do we think that the Congress meant to preclude the Corporation from providing to the Congress the kind of data that Executive agencies and Departments normally supply when requested to do so or when they desire to express their views on legislative proposals. In construing other statutory restrictions against lobbying by officials of Executive agencies and departments (for example, § 607 (a) of the Treasury, Postal Service, and General Government Appropriation Act, discussed infra), we have consistently recognized that these officials have a legitimate interest in communicating with the public and with legislators regarding their policies and activities. When their policies or activities are affected by pending or proposed legislation, discussion by officials of that policy or activity will necessarily, either explicitly or by implication, refer to such legislation and will presumably be either in support of or in opposition to it. Accordingly, we have always construed other anti-lobbying restrictions as permitting officials to express their views on pending or proposed legislation as it affects their policies and activities directly to Congress or to the public. 56 Comp. Gen. 889 (1977); B-128938 July 12, 1976.

On the other hand, we have construed these other statutory anti-lobbying restrictions as prohibiting agency and department officials from engaging in "grass roots" lobbying, involving appeals addressed to the public at large or to selected individuals suggesting that they contact their elected representatives and indicate their support of or opposition to legislation being considered by the Congress. 59 Comp. Gen. 115 (1979). In other words, direct communication of its views by Corporation personnel to Members or Committees of the Congress is permissible; drumming up support for the same purpose outside the Corporation is not.

Accordingly, we do not think that the efforts by Corporation officials or employees to appeal to members of the public or the legal assistance community to contact their elected representatives in the Congress on behalf of legislative positions of the Corporation constitute "other appropriate communication."

LSC has broadly construed the exception in 42 U.S.C. § 2996e(c)(2), which reads "* * * except that personnel of the Corporation may testify or make other appropriate communication * * * in connection with legislation or appropriations directly affecting the activities of the Corporation", contending that this exception authorizes Corporation personnel to engage in all activities necessary to influence legislation and appropriation measures that directly affect the Corporation, including grass roots lobbying activities. We are unaware of any support for such a broad construction in the legislative history of this provision or elsewhere.

Indeed, the Conference Report to accompany H.R. 7824, the Legal Services Corporation Act of 1974 (S. Rep. No. 93-845, 92d Cong., 2d Sess. 22), supports our construction of the exception. The report states:

> "Both the House bill and the Senate amendment prohibit the Corporation from undertaking to influence the passage or defeat of any legislation by the Congress or by any State or local legislative body. The Senate amendment allowed the Corporation to testify and make appropriate comment in connection with legislation or appropriations directly affecting the activity of the Corporation. The House bill contained no comparable provision. The House recedes." (Emphasis added.)

As can be seen from the Conference Report, the exception was understood to allow only testimony and appropriate comment on legislation affecting the Corporation, which is consistent with our construction.

With regard to the use of funds by recipients of LSC assistance, under the provisions of 42 U.S.C. § 2996f(a)(5), the Corporation is charged with the responsibility of insuring that recipients do not use appropriated funds to influence the passage or defeat of legislation pending before the Congress except when representing a client or when:

> "(B) a governmental agency, legislative body, a committee, or a member thereof
>
> "(i) requests personnel of the recipient to testify, draft, or review measures or to make representations to such agency, body, committee, or member, or
> "(ii) is considering a measure directly affecting the activities under this title of the recipient or the Corporation."

The exception in 42 U.S.C. § 2996f(a)(5)(B)(ii), quoted above, should be given the same construction as the similar provision applicable to LSC personnel in 42 U.S.C. § 2996e(c)(2)(B), discussed above. That is, it should be construed so as to preclude expenditures of appropriated funds by recipients for grass roots lobbying. Here again, the Corporation has erroneously construed this exception broadly to permit recipients to expend appropriated funds to solicit others to contact their congressmen in connection with legislation affecting the recipient or the Corporation. For the reasons outlined above, we believe the Corporation's construction is improper. LSC has, however, promulgated regulations in 45 CFR § 1612.4 that implement its erroneous interpretation of this statutory provision as follows:

> "(a) No funds made available to a recipient by the Corporation shall be used, directly or indirectly, to support activities intended to influence the issuance, amendment, or revocation of any executive or administrative order or regulation of a Federal, State or local agency, or to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body or State proposals by initiative petition."

* * * * *

> "(3) An employee may engage in such activities if a government agency, legislative body, committee, or member thereof is considering a measure directly affecting the activities under the Act of the recipient or the Corporation."

As currently worded, these regulations authorize LSC fund recipients to expend appropriated funds for grass roots lobbying campaigns in support of legislation or appropriation measures that directly affect the activities of the recipient or the Corporation. In our opinion, to Representative Gilman, B-163762, November 24, 1980, (copy enclosed), we noted certain deficiencies in these regulations and wrote to the President of the Corporation recommending that he take appropriate action to amend the regulations to implement adequately the statutory restrictions on lobbying. The Corporation has not, however, acted on our recommendations.

In addition to the limitations on lobbying activities in the above cited statutory provisions, annual appropriation act restrictions have, throughout the existence of the legal assistance program, also curtailed such activities. Section 607(a) of the Treasury, Postal Service, and

General Government Appropriation Act, the language of which has been included in the Act every year since 1972, provides as follows:

> "No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress." (Emphasis added)

We have construed section 607(a) as prohibiting the expenditure of Federal funds by Executive agencies and Government corporations for activities involving appeals addressed to members of the public suggesting that they contact Members of Congress and indicate support of or opposition to legislation pending before Congress, or that they urge their congressional representatives to vote in a particular manner. 56 Comp. Gen. 889, supra.

We understand from discussions with the LSC General Counsel that LSC does not consider the restriction against lobbying activities contained in § 607(a) to be applicable to its appropriations because, when § 607(a) was first enacted in 1972, the Legal Services Corporation Act of 1974 (42 U.S.C. § 2996 et seq.) had not been enacted into law. The fallacy in LSC's argument is that appropriation Acts are enacted annually and restrictions in them apply to the use of funds for the fiscal year for which the appropriation was made. An appropriation restriction may forbid the use of funds by an agency even for some activity authorized in its organic legislation. In such a case, the restriction takes precedence over the organic legislation; that is, the agency would have substantive authority to carry on a certain activity but would have no funds available to spend on it. Section 607(a) has been enacted in the same form each year since 1972 and is, by its terms, applicable to appropriations contained in all appropriation acts. The § 607(a) restriction against the use of Federal funds for lobbying has thus been applicable to each annual appropriation the LSC has received.

Apparently LSC's interpretation that § 607(a) was not applicable to its appropriations and aggressive legislative representation by program personnel at the State level led the Congress to enact a provision similar to § 607(a), but expanded to cover State legislatures as well as the Congress, as a proviso to fiscal year 1979 appropriations provided for LSC in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1979 (Pub. L. 95-431, October 10, 1978, 92 Stat. 1021). This proviso, known as the Moorhead Amendment, reads as follows:

> "* * * Provided, No part of this appropriation shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress or any State legislature."

The Moorhead amendment has been applicable to the Corporation's appropriations each year since it was first introduced and enacted in 1978. Under this restriction, appropriated funds may not be used by recipients to appeal to members of the public to urge their elected representatives to support or defeat legislation pending in the Congress or in any State legislature. LSC has also failed to implement this restriction.

In summary, through the use of recipient organizations and their contacts at the State and local level, LSC has developed an extensive lobbying campaign to support reauthorization legislation for the corporation and related appropriation measures being considered by the Congress. This activity violates the anti-lobbying statutory and appropriation restrictions described above.

Because LSC's regulations and current policies appear to authorize recipients to expend appropriated funds for prohibited lobbying activities in derogation of the above-cited restrictions, we do not think, as a practical matter, that the Government would be successful in attempting to recover the illegally expended sums from the recipients. Also, because we are not authorized to settle the accounts of the Corporation, we are unable to take exception to these illegal payments. We have however, written the President of the Corporation informing him that we are advising both the Senate and House Appropriations and Judiciary Committees that the Corporation is expending Federal funds in violation of the above cited statutory and appropriations restrictions. In that same letter, we reiterate the recommendations in our opinion, B-163762, November 24, 1980.

We also reviewed the memoranda that you gave us for possible violations of restrictions on political activities contained in 42 U.S.C. § 2996e(e) and 42 U.S.C. § 2996f(a) by employees of either the Corporation or recipients. These restrictions are primarily designed to prohibit the Corporation or its recipients from assisting a political party or a candidate for public office. Our review did not uncover any evidence of such violations.

We trust this opinion is responsive to your request. If we can be of further assistance, please call on us.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

LETTER FROM DAN J. BRADLEY

May 11, 1981

The Honorable Lowell Weicker, Chairman
Subcommittee on State, Justice, Commerce,
the Judiciary and Related Agencies
Committee on Appropriations
United States Senate
S146A U.S. Capitol
Washington, D.C. 20510

Dear Senator Weicker:

On May 1, 1981, the General Accounting Office issued an opinion concerning the lobbying activities of the Legal Services Corporation and its recipients. As indicated in the attached response, the Corporation differs with the legal analysis prepared by GAO. Nevertheless, we have taken immediate steps to comply with the recommendation made by GAO.

I hope this information is of assistance to you.

Sincerely,

Dan

Dan J. Bradley

May 11, 1981

Milton J. Socolar
Acting Comptroller General
of the United States
Washington, D.C. 20548

Dear Mr. Socolar:

Thank you for your letter of May 1, 1981 and your opinion concerning the legislative activities of the Legal Services Corporation and its recipients.

Your opinion indicates that the Legal Services Corporation and its recipients have engaged in prohibited grass roots lobbying activities. You concluded that these activities were carried out pursuant to Corporation regulations and legal opinions that erroneously interpreted the Legal Services Corporation Act and its relationship to riders that have been attached to various appropriation bills. You have further requested that I take immediate action to halt such grass roots legislative activities.

Your opinion reflects a significant difference between the General Accounting Office (GAO) and the Legal Services Corporation in the interpretation of the applicability of various federal lobbying provisions. As you know, these issues have been the subject of intense Congressional review on several occasions. The differences, I believe, reflect the difficulty of meshing riders attached to appropriation bills, dealing with substantive issues that must be framed in the context of the expenditure of funds, with actual authorization legislation. Congress is currently reviewing this matter and attempting to resolve the imprecision and confusion that may have resulted from addressing this issue through multiple legislative approaches.

However, it is not accurate to suggest that the Corporation's statutory constructions are without merit or lacking any reasonable basis in law. I believe it is important to set out our differences.

The major difference between GAO and the Legal Services Corporation on this issue is the intermeshing of the Treasury, Postal Service Appropriations rider, the Moorhead rider and the Legal Services Corporation Act. The Legal Services Corporation concluded that the three must be read together in order to be meaningful and consistent. Contrary to GAO's statement on page 11, it is not the view of the Legal Services Corporation that the Treasury, Postal Service rider is inapplicable to LSC appropriations on the basis that it was originally adopted prior to the establishment of the Corporation. Rather it is our view that the Treasury, Postal Service rider, the Moorhead rider and the LSC Act must be viewed as an integral whole to fully determine Congressional intent with regard to this subject. It is a well established rule of statutory construction that two legislative provisions which appear to conflict should be construed, if possible, in a manner which renders them capable of co-existence.

As noted by GAO, the Treasury, Postal Service rider has been in effect since 1972. The LSC Act was passed in 1974, and its lobbying provisions were carefully drafted after an in-depth consideration of the issue. One must assume that both the general prohibition on lobbying in the Act, and the specific exceptions thereto were adopted by the Congress with full awareness not only of the Treasury rider, but of the prohibitions in Section 1913 of Title 18 of the U.S. Code. Section 1913, you will recall, also prohibits lobbying, unless otherwise authorized by Congress. Thus, we concluded that the exceptions in the LSC Act are also exceptions to the Treasury, Postal Service rider and Section 1913 of the U.S. Code.

In 1978, Mr. Moorhead offered another rider to the LSC appropriation bill which simply extended the Treasury, Postal Service rider to legislation pending before state legislatures. Because it is the Corporation's opinion that Congress, in passing the LSC Act, created these narrow exceptions to the original rider, then logically our opinion extends to the Moorhead amendment with respect to activities before state legislatures. The Corporation, in determining the appropriate statutory construction, relied on language in the Senate appropriation committee report:

> The Legal Services Corporation Act, as amended, governs the legislative activities of legal services programs by prohibiting activities designed to influence legislation, except under three narrowly drawn provisions. Like section 607(a) of the Treasury, Postal Services, and General Government Appropriation Act with respect to legislation pending before Congress, a proviso inserted by the House has been retained in the bill to reinforce and clarify that funds appropriated be governed by the provisions of the Legal Services Corporation Act,

> as amended, when utilized for activities designed to influence legislation pending before State legislatures, as well as Congress.
>
> S. Rep. No. 95-1043, 95th Cong., 2d Sess. 78 (1978).

It is our understanding that this language was inserted by the Committee as a condition for accepting the original Moorhead rider. Because it did not change substantive law in an appropriation bill, the Committee accepted the rider in 1978 and subsequent years.

We believe that there is a reasonable basis for differences of legal opinion in this matter. The Corporation's interpretation is based on accepted rules of statutory construction. However, the fact of the difference has caused much of the present confusion with respect to the extent and type of activities which are permitted to be undertaken by legal services personnel and has led to allegations of improper lobbying activities. The House Judiciary Subcommittee has carefully reviewed this issue and has made extensive revisions to this section of the Act in an effort to clarify this matter. As you know, with respect to the Corporation it has simply inserted the prohibitions of Section 1913 of the U.S. Code with no exceptions. It has also incorporated the publicity and propaganda language from both the Treasury, Postal Service and the Moorhead riders into the provision governing recipient activities. While we did not necessarily support this change, we can assure you that the Corporation and its grantees will follow the intent of Congress as it is expressed in the amended governing statute.

In the meantime, while we disagree with GAO's view of the interpretation of the various related provisions of existing law, and thus draw different conclusions about possible violations, we are making certain changes in our present activities. Prior to receipt of your opinion, I directed all personnel of the Legal Services Corporation to stop any and all activities coming within the GAO definition of grass roots lobbying activities. We stopped all mailings to that effect upon receipt of the original complaint from Congressman Sensenbrenner. It was our hope that this issue could be resolved quickly by the Congress.

With respect to our recipients, I will immediately bring your opinion to the attention of the Board of Directors and request that the Board consider necessary changes in the relevant regulations.

I will keep you advised of the Corporation's actions regarding this matter.

Sincerely,

Dan J Bradley

Dan J. Bradley

STATEMENT OF C. LYONEL JONES, PRESIDENT, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

Mr. Chairman, Members of the Subcommittee on State, Justice, Commerce, the Judiciary and Related Agencies, I am C. Lyonel Jones, President of the National Legal Aid and Defender Association (NLADA) and Executive Director of the Cleveland Legal Aid Society. I thank you for the opportunity to offer testimony on the Legal Services Corporation's (LSC) budget request for fiscal year 1982, a matter of great importance to NLADA.

The National Legal Aid and Defender Association was established in 1911. It is a private, non-profit organization that devotes all its resources to the support and development of legal assistance for the poor in both civil and criminal matters in the United States. Its membership includes legal services programs, public defender offices, members of the private bar, and clients.

In submitting testimony to this body, NLADA is fulfilling its role as an independent advocate for quality legal assistance for the poor. The Legal Services Corporation and the provision of legal services to the poor is an area of the federal budget which requires funding at levels commensurate with the needs of poor people in this country for civil legal assistance. Therefore, NLADA strongly supports the Legal Services Corporation's budget request of $399.6 million for fiscal year 1982. However, NLADA fully recognizes Congress' determination to curb growth in federal spending, to maximize anti-inflation efforts, and to provide publicly-financed services more effectively and at lower costs to persons in real need. NLADA, therefore, urges this subcommittee to support a level of funding for the Legal Services Corporation that is, at a minimum, no less than the current fiscal year 1981 level of $321.3 million.

Funded by congressional appropriations in 1980, the Legal Services Corporation distributed grants to some 320 legal services programs operating more than 1,200 neighborhood offices throughout the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Micronesia.

The current level of funding allows the Corporation to meet only a portion of the legal needs of the nation's poor. There are an estimated 30 million poor people in America. In 1980, Corporation-funded programs provided legal help to 1.5 million of those poor. Uncounted more poor clients were turned away because of lack of funds to help them. The failure to increase the legal services program's budget by at least as much as the overall inflation rate means, in real terms, declining services to the poor.

The issue of funding for the Legal Services Corporation is not whether the federal government can now afford to allocate funds to a worthwhile social program. Rather, the issue is the fundamental principle of equal justice under law. This nation was founded on law, on the concept that all Americans are equally protected by --and subject to -- the law. But without access to the law, the poor have no stake in America's system of justice.

In every community where a local legal services program exists, there is evidence of the Corporation's enormous contributions to equal justice for the poor people of America. Because of the Corporation's work, millions of people have seen the justice system work through enforcement of their legal rights and have come to believe that justice in this nation is not only for those who can afford to pay. Legal services programs work for clients in enforcement of our civil laws which Congress and state legislatures enact in the interests of the public good. The Legal Services Corporation is an economical and efficient mechanism to aid in enforcing the law.

SUFFICIENT FUNDING

The legal services program obviously has many benefits. It contributes, in no small way to alleviating injustice, to achieving equal justice under law, and to resolving disputes. To the extent that LSC accomplishes the above, expenditures for this program are a wise allocation of resources.

In its efforts to achieve minimum access (to extend legal services to every part of the United States and its possessions) during the past several years, the Legal Services Corporation has spent newly appropriated monies on expanding services to new areas of the country, at the expense of older programs. These older programs have not shared in any major way in the additional money that Congress has appropriated. The cost-of-living and cost-of-service increases that LSC has provided grantees have been well below both the level of inflation and increases received by other federally-funded programs. (Only an 8% cost-of-living increase was granted in 1981.)

The fiscal year 1981 appropriation of $321.3 million has been allocated primarily to maintaining field programs and supporting them through efforts to improve quality and productivity. LSC spent less than 3% of its budget on central administration and management.

The current LSC budget is a modest one, and the funds have been directed to help programs meet cost increases without having to sacrifice services desparately needed by clients. The funds used for support purposes ensure that the service provided is of the highest quality. This quality necessarily means providing training, and providing technological improvements and technical assistance.

NLADA hopes that in determining the level of funding for LSC, this subcommittee will keep in mind the following necessities. First, it is essential to maintain the level of service achieved during fiscal year 1981. Second, adequate funding is necessary to provide high quality representation. Third, the purpose of federal funding for civil legal assistance must be to provide as many eligible clients as possible with as high-quality service as possible, in the most cost-effective manner.

While the present economic climate may well prevent this subcommittee from increasing the appropriations to LSC, NLADA views continuation of at least the current level of funding as an absolute minimum. NLADA considers this request justifiable, given that even at this funding level, services to eligible clients will have to be cut back, and considering that the demand for these services is enormous. Tragically, at the very time when LSC has achieved minimum access, the program must start cutting back, rather than sustaining its remarkable achievements.

Any lesser appropriation will force lay-offs, office closings, and more greatly reduced client service.

LOWER APPROPRIATIONS UNDER CONSIDERATION

The Legal Services Corporation had $333,785,708 available to it in fiscal year 1981. In addition to the appropriation of $321.3 million, that figure includes an appropriation balance from fiscal year 1980, revenue from sale of publications, special purpose grants and contracts, and investment income.

Of this amount, the LSC board of directors originally allocated $332,649,194 for fiscal year 1981. However, upon reviewing the first quarter's budget activity the board approved modifications which increased the budget to $333,668,088.

Using this figure and LSC's consolidated operating budget of December 31, 1980, this committee can assess the potential impact of proposed fiscal year 1982 budget cuts on LSC's ability to continue to provide quality legal assistance to the poor.

AN APPROPRIATION OF $299 MILLION

The current allocation to field programs is $285,351,342. This is the amount that has been set aside exclusively to continue basic field programs already in place. Of this figure, $3,304,784 is necessary to complete expansion required to comply with the minimum access formula which LSC has adopted and to which the Congress has subscribed in effect, if not in fact. This allocation to field programs most likely would remain unchanged if LSC had only $321.3 million (as opposed to $333.6 million) available to it in FY 1981. This $285 million is not, however, the amount which will be necessary to maintain local programs in FY 1982, since it is not adjusted for increasing costs-of-service in 1982, e.g., costs of salaries, building leases, office supplies. With only a moderate increase of 9%, the FY 1982 cost for maintaining all field programs would be $307,430,748 -- clearly exceeding an appropriation of $299 million..

Even presuming no 9% cost-of-services increase to field programs, only $13,648,658 ($299,000,000 minus $285,351,342) would be left to fund all other Corporation functions, including administration.

The Office of Field Services is the division within LSC responsible for making awards and contracts to the programs which provides direct legal assistance to the poor, for monitoring programs' compliance with the Legal Services Corporation Act and regulations, and for evaluating programs' overall performance. In FY 1981, the allocation to the Office of Field Services was $7,150,115. An allocation of $5,932,731 goes to Management and Administration, which includes offices of the president, general counsel, comptroller, public affairs, etc. The Office of Program Support provides essential management and advocacy training to managers, lawyers, and paralegals in the field programs. In FY 1981, this Office was budgeted at $6,756,982. Within a FY 1982 budget of $299,000,000, the Office of Program Support would be forced to cut its budget, and thus its services by 92% -- to only 8% of the FY 1981 level.

With the above figures in mind, LSC under a FY 1982 budget of $299 million, might retain the following functional components.

1.	Direct provision of legal services through field programs:	$285,351,342 (100% of FY 1981)
2.	Office of Field Services:	7,150,115 (100% of FY 1981)
3.	Management and Administration:	5,932,731 (100% of FY 1981)
4.	Office of Program Support	565,812 (8% of FY 1981)

Clearly, LSC's ability to provide adequate support to field programs would be significantly, if not totally, curtailed at this appropriation level. In 1980, the average training cost was $1,600 per legal services program. As stated, the Office of Program Support funds would be cut by 92%, requiring LSC to choose between providing extremely limited training in substantive law and litigation techniques or in management skills and staff development. Diminution of activity in either major training area would reduce program cost-effectiveness.

Additionally, the national and state support centers, which provide research, advice, and limited co-counseling in complex legal matters, could not be funded. These centers, along with locally-recruited private bar resources, save staff attorneys research time in highly specialized legal areas, allowing them more time to assume responsibility for additional client problems.

AN APPROPRIATION OF $260 MILLION

LSC's ability to provide funding for legal services would be severely impeded at this appropriation level -- a reduction of 20% from 1981. Funding to field programs would have to be cut back. Under the minimum access formula, if the LSC appropriation is only $260 million, approximately 8,000,000 poor persons might be denied access to federally funded legal assistance.

NLADA accepts as a given that even with an appropriation of only $260 million, LSC would allocate its budget to continue providing as much direct legal service as possible. Also given is that budgets for both Management and Administration and the Office of Field Services are necessary to make grants to local programs and to ensure program's compliance with the LSC Act and regulations. Hypothetically, if budgets for key LSC administrative services (e.g., Office of Field Services, Management and Administration) could be reduced by the same percentage as the budget for direct legal services, the components would share a 13% cut, and this would allow no allocation for the Office of Program Support.

1.	Direct provision of legal services through field programs:	$248,255,668	
2.	Office of Field Services:	6,220,601	(87% of FY 1981)
3.	Management and Administration:	5,161,476	
4.	Office of Program Support	-0-	

AN APPROPRIATION OF $200 MILLION

Below $260,000,000, it is NLADA's opinion that continuation of any viable national legal services program is jeopardized. Funding at the $200 million mark -- less than two-thirds of the FY 1981 level -- totally disrupts services. NLADA cannot comprehend how such a program could maintain any national administrative mechanism, or ascertain how extremely limited services could be spread nationally, particularly in rural areas. NLADA is unable, in good faith, to put forth any hypothesis here.

In summary, in its six-year history, the Legal Services Corporation has provided competent legal representation for the poor. With adequate funding and support, the Corporation can continue to ensure access to our legal system. Without adequate funding, the accomplishments of this program will be wasted, and the principle of equal justice under law will be rendered empty and meaningless for millions of poor people.

NLADA urges this subcommittee to support adequate funding for the Legal Services Corporation for fiscal year 1982. On behalf of NLADA, I thank you for this opportunity to present our views on this most important matter.

Statement of Charles Dorsey, Director, Legal Aid Bureau of Maryland and Chairperson of Project Advisory Group and Bruce Morrison, New Haven Legal Assistance of Connecticut and Member of the Project Advisory Group Executive Committee

"Don't cut Legal Services!" How can we dare to say that? Don't we understand that there is no choice, that all social programs must be cut to respond to the public mandate to bring inflation under control? Certainly we understand the need to respond affirmatively to serious inflation and economic stagnation. Certainly we understand that attempting to balance the federal budget is one possible step in that direction. But that does not justify, much less compel, cutting the budget of the Legal Services Corporation.

The federal program for Legal Services -- nurtured for ten years under OEO and CSA, brought to effective, nationwide coverage through this Subcommittee's support of the staged, planned growth of the Legal Services Corporation -- represents our society's noble attempt to keep a fundamental promise to the most vulnerable of its people -- equal justice. And this is the last place to look to save money in the federal budget, especially when the savings possible can only have a negligible effect on federal expenditures.

Assuming that budget-cutting is the order of the day, there still remains the duty to exercise wisdom and restraint in that process to assure that cuts are not adopted which do more harm than good. That, we believe, would be the effect of cutting the Legal Services Corporation not because we have some narrow self-interest in continued employment (we could all be employed in less draining, more lucrative work elsewhere), but because a fair evaluation of the facts warrant the maintenance of current Legal Services Corporation funding.

- It is a fact that there is no public mandate to cut the Legal Services program. The recent CBS-New York Times poll shows 87% public support for at least maintaining the current program funding. Editorial judicial and private bar support has been overwhelming. With respect to the Legal Services Corporation, the President is claiming a mandate to cut which he does not have.
- It is a fact that Legal Services is one of the most cost-effective programs the federal government has ever sponsored. Millions of people are helped each year, costs are low, productivity is high. This is not an example of "fraud and waste", and it should be exempted from cutting in recognition of this fact.
- It is a fact that access to justice for the poor is critical to our national security. The ideal of equal justice under the law is one of the most important things this society has going for it. That we have not achieved this ideal is unfortunate, but understandable. That we would reduce or even eliminate our pursuit of the ideal for our poorest people is unacceptable. A society built upon respect for law cannot be secure if it denies large segments of its people the tools to enforce their legal rights, and it is the enforcement of existing legal rights of the poor which represents the vast bulk of the work of the Legal Services program.
- It is a fact that the $321 million Legal Services Corporation budget represents only the completion of minimum access for the poor to the legal system. The current funding level was reached by a plan endorsed and supported by this Subcommittee over the past five years. Any significant cut in the Legal Services Corporation budget cannot be absorbed without a substantial retreat from the goal just realized of providing minimum access to justice for all the nation's poor. And minimum access

is just that -- the ability of all the poor to have *some* chance to have *some* of their *most critical* legal rights enforced and legal needs met.

- It is a fact that *many people will suffer* if Legal Services funding is reduced. Illegal evictions will occur, problems of domestic violence will lack an effective legal response, unfair and discriminating employment practices will go unchallenged, intended beneficiaries will be improperly denied government assistance without recourse. These real deprivations in the lives of people, already struggling to cope with incomes inadequate to pay for necessities, will impose a burden on the poor without reason or benefit.

In sum, whatever the merit of budget cutting in general, cutting the Legal Services Corporation budget is without merit. It is not an action supported, much less mandated, by the public. It is not the source of a substantial sum to balance the budget. It is not an attack on an inefficient or wasteful program. Rather, the current Legal Services Corporation budget represents a level of funding achieved over several years of careful planning to provide minimum access to Legal Service to all the nation's poor. This access is critical to them, and to the nation as a whole, and the current atmosphere should not cause us to abandon such an important goal so recently and properly achieved.

STATEMENT OF REID PEYTON CHAMBERS

Mr. Chairman and members of the Committee, my name is Reid Peyton Chambers. I am presently a partner in Sonosky, Chambers & Sachse, of 2030 M Street, N.W., Washington, D.C., a law firm that primarily represents Indian tribes. I also served as Associate Solicitor for Indian Affairs with the Department of the Interior from August 1973, to September 1976. In that capacity I was responsible for all legal work of the Department dealing with Indians, and for initiating and prosecuting cases to protect the rights guaranteed to Indians under treaties and federal laws.

I am deeply concerned about the Administration's recommendation to terminate funding for the Legal Services Corporation. Elimination of federal funding for Legal Services would hurt the impoverished throughout this Nation. In particular, Indian communities across the country would suffer dramatically.

For many years, I have been very familiar with the fine work of publicly funded programs like Dakota Plains Legal Services (formerly South Dakota Legal Services) in North Dakota and South Dakota; Pine Tree Legal Assistance in Maine; Evergreen Legal Services in Washington; California Indian Legal Services; and the Indian Law Support Center of the Native American Rights Fund in Boulder, Colorado. Both with the Government and in private practice I have worked with attorneys from these programs and reviewed their work product. Each of these programs has made significant contributions to the protection of Indian rights, treaty rights, and trust properties, and to the preservation of tribal governmental authority.

Most importantly, effective protection of Indian rights will be almost impossible without the presence of legal services programs such as these on Indian reservations. That private bar, for the most part, does not maintain offices on Indian reservations. Reservations tend to be located in isolated, rural settings. Private lawyers located on or near reservations have conflicts of interest that preclude their representing Indians in most cases. These lawyers are professionally and financially dependent on the more affluent non-Indian community. Indian rights protection cases on behalf of the reservation needy tend to require many hours of research on highly complex and technical issues. Special knowledge of Indian law is necessary. Outcome of these cases is often uncertain. Private attorneys lack the expertise to effectively replace Legal Services for such cases, unless they devote a large part of their time to mastering Indian law and are willing to litigate cases for many years before receiving payment (which most cannot do financially).

Nor is the private bar in areas of the country with significant Indian populations likely to contribute financially to Indian legal services programs. Vigorous protection of Indian rights is seen as inimical to the interests of the clients the private bar represents. Often, too, the political climate in these areas is unsympathetic to Indian rights.

Mr. Chairman, great strides have been made in the legal protection of Indian rights in the past two decades. Not all of these, of course, have been produced by legal services programs, but many have.

Without the continuation of a strong and independent legal services program, poor tribes and individual needy Indians will simply not have the access to the judicial system necessary to insure the protection of rights Congress intended them to have.

Thank you for considering my testimony.

STATEMENT OF ARAM K. BERBERIAN, SECRETARY, RHODE ISLAND DEFENSE ATTORNEYS ASSOCIATION

I would like to express my support of the proposal to eliminate appropriations to the Legal Services Corporation. My sole experience with a recipient of LSC funds is with the Rhode Island Legal Services, Inc. Consequently my objection must be narrowly construed.

R. I. Legal Services was incorporated in 1969 under the auspices of Governor Frank Licht of the State of Rhode Island. A minority of its directors were members of the bar, which was lawful at that time. When the law was changed with respect to requiring a majority of lawyer members R. I. Legal Services, Inc. continued to have a minority of lawyers on its board. In any event, the first director was the nephew of Governor Licht's mentor, former Governor Dennis J. Roberts. The father of the new chairman of RILS, Dennis J. Roberts, II, was Chief Justice Thomas H. Roberts of the Rhode Island Supreme Court. With such credentials it is not surprising that R. I. Legal Services Inc. ignored many of the statutory criteria and guidelines for recipients of LSC funds.

The most notable deviation from statutory guidelines was the entry of RILS into the criminal case of State vs Holiday, 109 RI 93. The Office of Economic Opportunity and later the Legal Services Corporation enabling laws specifically prohibited recipients from engaging in criminal cases. Statutory criteria at all times precluded the entry of appearance of recipients in fee generating cases absent certain qualifications. This stricture was frequently ignored by RILS most notably in Russell vs Kalian, 414 A2 462. The resulting money judgment that the RILS client obtained against a wealty landowner would make any plaintiff's counsel salivate.

With its political muscle, RILS convinced the Rhode Island Supreme Court to admit to practice in Rhode Island lawyers otherwise ineligible as long as they were employed by RILS. See In Re: Roney 341 A2 752, 115 RI 194. These lawyers then engaged in hit and run litigation. It was not unusual for as much as six lawyers to succeed each other in any individual case. Their predecessors would enter and leave RILS like a revolving door. The RILS graudates would then appear as members or employees of law firms not noted for their civil rights or pro bono legal activity.

RILS solicited members of the R. I. bar to volunteer to accept cases from it. Almost no one did. Those that did soon realized that they were being used to enhance the funding ability of RILS.

The R. I. Bar Association, which has the statutory authority to appoint eight members of the board of RILS, recently went on record as favoring an extension of the LSC funding. The leadership of the Rhode Island Bar Association is beholden to the R. I. Supreme Court under whose Chief Justice Thomas H. Roberts, the Bar Association achieved "integrated" status requiring all R. I. lawyers to pay dues to it. No member of the R. I. bar was asked for his opinion with respect to LSC funding.

Perhaps the most egregious anti-social conduct of RILS is evidenced by its attitude toward defending evictions of tenants in arrears on their rents. The usual scenario consists of a Mom & Pop landlord hanging onto their three decker by their fingernails. A welfare recipient tenant would fall in arrears. After two or three months of promises, the landlord would finally retain a lawyer at a cost of $300.00 or more. RILS would enter an appearance for the defaulting tenant and engage in months of dilatory interrogatories, depositions, motions to dismiss and interloccutory appeals. Notwithstanding the priority given to trespass and ejectment cases under R. I. law, some cases took as long as 16 months to obtain a judgment of eviction. During this time the tenant lives in the tenament, rent free and upon his departure presents a vandalized flat to the "victorious" landlord.

The Governor's Committee to maintain an oversight on RILS activities engaged in benign neglect. Abuses were not only uncorrected but continue rampant to this day. It is unfortunate that the lofty motives of the originators of Legal Services to the indigent have been prostituted by those people who were duty bound to effectuate them. The LSC program should be severely contained.

LETTER FROM STEPHEN T. BURNS

May 12, 1981

The Honorable Lowell P. Weicker, Jr.
Chairman, State, Justice, Commerce and
Judiciary Subcommittee of the Senate
Appropriations Committee
United States Senate
Washington, D.C. 20510

Dear Senator Weicker:

I was the guiding force behind the creation of the Ombudsman Foundation, Inc., of St. Charles, Missouri, and was its president and chief executive officer.

For approximately eighteen months, beginning in May 1976, the Ombudsman Foundation provided legal services, in the form of judicare, in civil cases to indigents in the five Missouri counties adjacent to metropolitan St. Louis. Our program was funded under Title XX of the Social Security Act. The Legal Services Corporation (LSC), without notification to us, then funded the Legal Aid Society of Eastern Missouri to provide services in those same five counties. The Ombudsman Foundation withdrew from the program in order to avoid duplication of service.

I have read the testimony which Mrs. Phyllis Schlafly presented to your Subcommittee on April 22, 1981. Her statements regarding the events that occurred between the Ombudsman Foundation, the LSC and the Legal Aid Society were accurate.

I would be pleased and grateful to have the opportunity to appear before your Subcommittee. My appearance would serve three purposes. First, I could document with records the truth of Mrs. Schlafly's testimony; I believe this is important since some people apparently have questioned her accuracy. Second, I could present evidence of other questionable activities of the LSC with respect to the Ombudsman Foundation which Mrs. Schlafly did not touch upon in her testimony. Finally, as one of the few people with experience in administering a judicare (as opposed to a legal aid) system, I believe I could make valuable contributions to your deliberations.

I sincerely hope that I will be invited to appear before your Subcommittee.

Whether or not I am invited to testify, I request that this letter be made a part of the official record of the April 22, 1981 hearing before your Subcommittee. In the first place, that record should contain some substantiation, however brief, of the charges that have been levelled against the LSC. In the second place, I understand that Senator Rudman requested documentation of those charges. This letter will affirm that such documentation does exist should your Subcommittee wish to review it.

Yours very truly,

Stephen T. Burns

LETTER FROM ADVOCATES TO SAVE LEGAL SERVICES

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received the following letter from Hon. Walter F. Mondale and Hon. James B. Pearson, Advocates to Save Legal Services, regarding the fiscal year 1982 budget for the Legal Services Corporation. By direction of the chairman the letter has been printed in the record.]

[The letter follows:]

Letter From Walter F. Mondale, Former Vice President of the United States and James B. Pearson, Former U.S. Senator From Kansas, Cochairpersons, Advocates to Save Legal Services

April 22, 1981

The Honorable Lowell Weicker, Chairman
Subcommittee on State, Justice, Commerce,
The Judiciary and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are writing as cochairpersons of Advocates To Save Legal Services to urge the continued appropriation of funds to the Legal Services Corporation to provide high quality civil legal assistance to the poor.

Advocates To Save Legal Services is a group of more than 100 individuals -- former Republican and Democratic Members of Congress; former federal officials appointed by Presidents Carter, Ford and Nixon; deans and professors of law schools; and attorneys in private practice throughout the country. We have come together out of a common belief in certain essential principles.

1. The ability to use the legal system is fundamental to our democracy. If we abandon our 15 year commitment to legal services, we put a price tag on justice and say to the poor, you cannot afford it.

We rely on an adversarial system of justice for the peaceful resolution of disputes between individuals and interests. If the system is to work, it must be fair. Fairness demands that all parties in a dispute be represented by effective legal counsel. Whether or not a particular party can afford to pay for that counsel should have nothing to do with his or her ability to use the system. If we remove the poor from our system of justice, then we cannot expect them to have any confidence or any stake in that system.

2. Legal Services is an essential civil law enforcement mechanism necessary to assure that laws enacted by Congress are effectively implemented and enforced. Both the President and Congressional leaders have emphasized the need for more effective law enforcement. That objective cannot be obtained simply by concentrating on police and prosecutors -- the institutions in our society charged with enforcement of criminal law.

Congress and other legislative bodies have developed a body of civil law that provides certain rights, benefits and protections. Much of that law has particular impact for the poor -- their jobs, their income, their housing, the education of their children, their personal liberty. But that law, in itself, has little meaning unless poor people have the ability to assure that it is effectively enforced.

Often that enforcement requires legal representation, in the courts, in administrative rule-making, in negotiating with responsible bureaucrats, in the legislative process itself. Now, more than at any time in the history of this program, poor people must have such representation. The President's budget recommendations are forcing a fundamental reexamination of the law affecting the poor -- not just in Washington but in state capitols and city halls as well. Whatever the outcome of those deliberations, it is clear that there will be changes in the law, new questions involving interpretation, regulations, and enforcement. The persons most directly affected by those decisions -- the poor -- must have effective legal representation as these decisions are made and implemented.

3. The federal role in the provision of legal services is an essential element in a total delivery system that involves both the public and the private sector. Elimination of federal funds will leave a gap that cannot be filled by the private bar or by state and local governments.

In communities throughout the country, it is the presence of a stable legal services program, supported with Corporation funds, that provides the catalyst, the base, and the support for expanded pro bono participation of private attorneys. The presence of the core program makes possible the effective utilization of small contributions from aging agencies, from local governments, from United Way. There is no way, however, that these other resources can replace the core.

Corporation grantees provided legal representation last year in 1.5 million matters. Even with a massive increase in *pro bono* work by private attorneys, that burden cannot be shifted to the private bar. Much of that legal work simply will not be done.

Nor can the responsibility be shifted to state and local governments. Those governments are now being forced to absorb a larger share of responsibilities in areas where their role is already clearly established -- in public assistance, health services, education, social services. And they are being asked to do that with less money than they have ever had before. It is inconceivable that state and local governments, placed in that situation, would shift shrinking resources to an area like legal services, where they have never recognized a responsibility in the past.

Even if there were no resource question, the potential for conflict of interest presents an insurmountable barrier. Much of the legal representation poor people need, especially on law enforcement matters, is representation against state and local governments. The program cannot work if lawyers for the poor are paid by the persons or interests who are the source of the clients' legal complaints.

If Congress believes that poor people must have access to justice, then Congress must provide direct support for legal services.

4. *Administration of legal services through a politically independent Corporation assures effective and efficient use of federal funds in a manner that accomplishes a number of objectives sought by Congress and the President*.

It is difficult to imagine a public program that comes closer to meeting the principles this Administration espouses -- minimum bureaucracy, low administrative overhead, local control, stimulation of private resources. This is not a program that adds to government regulation and control. It is just the opposite -- a program that gives those persons whose lives are most controlled by government the chance to regain some of that control, through the law.

Congress invests $321 million in legal services. The return on that investment has been enormous, not just for the poor but for our entire system of justice.

We recognize the pressures under which you are considering future appropriations for the Corporation. We urge you, however, to reject the proposal to eliminate all funding for legal services or to shift responsibility to a social services block grant program. We urge an appropriation directly to the Corporation in an amount which, even if reduced from current levels, will assure the continued availability of legal assistance to the poor throughout the country.

Sincerely,

Walter F. Mondale James B. Pearson

Walter F. Mondale

James B. Pearson

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LETTER FROM HERBERT B. EVANS, CHIEF ADMINISTRATIVE JUDGE, OFFICE OF COURT ADMINISTRATION, STATE OF NEW YORK

April 2, 1981

Honorable Mark O. Hatfield
Chairman, Appropriations Committee
United States Senate
Washington, D.C. 20510

Dear Senator Hatfield:

The Chief Judge of the State of New York, Lawrence H. Cooke, on behalf of the entire New York State Court of Appeals, has asked me to inform you that on March 27, that Court "unanimously expressed its serious concern that Legal Services Programs appropriations might be reduced or eliminated." In his letter to me, a copy of which is attached, Chief Judge Cooke also states: "Such fiscal policies could critically undermine the rights and opportunities of litigants and of members of society to legal services and to access to the Courts."

I know that the concern of all the members of our State's highest Court is rooted in the belief that the representation provided to the poor in New York State through Legal Services Programs has benefited not only the clients served, but also the court system and the general public. That representation has moved our entire society closer to the ideal of equal justice for all. Any movement away from that ideal would diminish us all.

As Chief Administrative Judge of the State of New York, I fully appreciate the fiscal constraints acting on all levels of government and the need for economy in government. Some government programs, however, are so intimately linked to the fundamental goals of our society, such as equal justice for all, that to eliminate them or cripple them through deep cuts would strike at the very heart and soul of that society. I respectfully submit that legal services for the poor is just such a program, and it should be preserved.

Sincerely,

Herbert B. Evans

Herbert B. Evans

March 27, 1981

Hon. Herbert B. Evans
Chief Administrative Judge
Office of Court Administration
270 Broadway
New York, New York 10007

Re: New York State Court of Appeals Letter
of Support for Restoration or Retention of
Appropriations for Legal Services Programs

Dear Chief Administrative Judge Evans:

This letter is written to you so that you may take appropriate steps to communicate to Congress and other interested persons or institutions the views of the New York State Court of Appeals concerning Legal Services Programs appropriations.

At its formal Conference today, this Court unanimously expressed its serious concern that Legal Services Programs appropriations might be reduced or eliminated. Such fiscal policies could critically undermine the rights and opportunities of litigants and of members of society to legal services and to access to the Courts. This Court further authorized me as Chief Judge of the State of New York to notify appropriate officials and to exhort them to fund adequately the Legal Services Programs.

It would be appreciated if you would promptly circulate this letter, as well as any other supportive data from your office, to Congress, to appropriate House and Senate Committees, to the Director of the United States Office of Management and Budget and to the President.

Other groups and institutions have expressed themselves publicly on this issue and you may inform them as well that they may refer to these policy views of the Court of Appeals.

Finally, the Public Information Office of this Court will also release my letter to you on behalf of the full Court.

Please do everything you can to assist in this matter.

Sincerely,

Lawrence H. Cooke.

LAWRENCE H. COOKE
Chief Judge of the
State of New York

LETTER FROM MARTIN E. SLOANE, GENERAL COUNSEL, NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, INC.

April 3, 1981

The Honorable Mark O. Hatfield
Chairman
Senate Appropriations Committee
Room: 463 Russell
Washington, D.C. 20515

Dear Senator Hatfield:

I am writing to urge your support for reauthorization of the Legal Services Corporation and for appropriation of funds in the amount necessary to enable the Corporation to maintain at least its present level of service. On the basis of our experience, NCDH is convinced that, to secure equal rights to housing, as well in other areas, continued federal support for Legal Services is essential.

NCDH is a non-profit organization dedicated to eliminating discrimination in housing and achieving free housing choice for all Americans. NCDH was founded in 1950. Robert C. Weaver, first Secretary of Housing and Urban Development, was its first President. Following Dr. Weaver's tenure at HUD, he was again elected President of NCDH, a position he continues to hold.

A principal emphasis of NCDH activities is legal action to enforce Title VIII of The Civil Rights Act of 1968 (the Federal Fair Housing Act) and other federal, state, and local laws which secure the right to housing without discrimination. Private litigation of the sort engaged in by NCDH is, of necessity, the principal means of enforcing the rights guaranteed by Title VIII. The two other means provided under the statute -- conciliation by HUD and "pattern and practice" lawsuits by the Attorney General -- have proved to be relatively ineffective. As the Supreme Court concluded some years ago:

> Since HUD has no enforcement powers and since the enormity of the task of assuring fair housing makes the role of the Attorney General in the matter minimal, the main generating force must be private suits in which complainants act not only on their own behalf but also as private attorneys general.

Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205, 211 (1972).

In light of the importance of private litigation as the principal Title VIII enforcement mechanism, the need for attorneys willing and able to represent private victims of discrimination is readily apparent. There are few resources, however, available for this purpose. The lack of such resources is demonstrated by the plain fact that NCDH, with a staff of four lawyers, represents the largest single legal resource devoted exclusively to fair housing litigation. Because of our limited resources, we are unable to accept many of the individual complaints of housing discrimination which are brought to our attention. Instead, we refer many of these complaints to other attorneys or organizations which are equipped to deal with them effectively. Chief among these organizations has been legal service offices. Invariably, lawyers from these offices have willingly cooperated and provided competent legal representation to victims of discrimination who otherwise would have had no way of securing legal redress for violations of their statutory rights. The continued availability of legal service for fair housing enforcement is therefore essential if Title VIII rights are to be achieved in fact, as well as in legal theory.

Beyond this, NCDH has grown to rely heavily on cooperation from legal service offices in cases in which we become actively involved. NCDH litigation is carried on nationwide. In all cases, we require the assistance of local counsel who are willing to work with us on a pro bono basis. Legal service attorneys have proven to be an invaluable resource for us in many cities throughout the country. These attorneys have demonstrated their knowledge, reliability, and above all, their capacity to do excellent legal work. In recent years, we have worked closely and productively with legal service attorneys in such cities as Toledo, Ohio; Norfolk, Virginia; St. Louis, Missouri; Orlando, Florida; Omaha, Nebraska; and Gadsden, Alabama. Without the assistance of these attorneys, NCDH would have found it difficult to proceed successfully with many of its cases.

Fair Housing is, of course, only one of the many rights which legal service lawyers have worked so hard and so well to secure. In this, as well as in other areas where legal representation is necessary to secure basic rights, legal services has demonstrated its extraordinary value. By the same token, to deprive lower income people of this one invaluable source of independent and highly trained legal counsel would be, in effect, to deprive them of the basic rights themselves.

For these reasons, we urge your support for reauthorization and adequate funding of the Legal Services Corporation.

We respectfully request that this letter be made a part of the Committee record.

Sincerely,

Martin E. Sloane

Martin E. Sloane
General Counsel

SUBCOMMITTEE RECESS

Senator **Rudman**. Thank you very much. I want to thank each of you for appearing before the committee. I assure you your testimony will be given great weight and consideration.

We will now stand in recess at the call of the chairman.

[Whereupon, at 12:22 p.m., Wednesday, April 22, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

WEDNESDAY, APRIL 29, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room S–146, the Capitol, Hon. Lowell Weicker (chairman) presiding.

Present: Senators Weicker and DeConcini.

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

STATEMENTS OF:
  HON. DANTE B. FASCELL, CHAIRMAN
  HON. ROBERT DOLE, COCHAIRMAN

ACCOMPANIED BY:
  R. SPENCER OLIVER, STAFF DIRECTOR
  DEBORAH M. BURNS, OFFICE MANAGER

PREPARED STATEMENTS

Senator WEICKER. The subcommittee will come to order. Dante, go right ahead.

Mr. FASCELL. Mr. Chairman, I want to thank you very much. We have a small noncontroversial matter, except for one issue which we are still discussing.

Before that, let me submit a statement for the record from our cochairman, Senator Dole. He has been a member of the Commission, and by virtue of the change in the Senate has become cochairman in the Helsinki Commission which is by matter of precedent rather than law.

We are very happy with the arrangement, however.

Senator WEICKER. His statement will be included in the record at this time.

Mr. FASCELL. I have a prepared statement I would like to submit for the record.

Senator WEICKER. It also will be submitted.

Mr. FASCELL. And then I will answer questions you and your staff may have with regard to my statement.

[The statements follow:]

Statement of Senator Robert Dole

Mr. Chairman, I am testifying today in support of the goals and activities of the CSCE Commission of which I am the Co-chairman.

The Commission has worked since 1976 to achieve fuller implementation of the provisions of the Final Act, particularly those provisions that deal with human rights. This is an important task.

The Commission fulfills its Congressional mandate in many ways. It has become a clearinghouse for information on Helsinki-related issues. The staff members have personal contacts with representatives of many non-governmental organizations concerned about various aspects of the Helsinki process. The Commission receives many letters and phone calls each week from persons seeking advice or assistance because of violations by Eastern European Governments of fundamental human rights. Many of these appeals are particularly shocking in the degree of insensitivity exhibited by these Governments, particularly the Soviet Government. For example, the Commission frequently hears from persons who have been separated for decades from their close relatives. Some are prohibited from either traveling to the Eastern European country or bringing their relatives to this country. The Commission calls these violations to the attention of the Governments concerned and uses whatever leverage it can find to resolve some of them.

The Commission also holds formal hearings on human rights issues. Last spring, for example, hearings were held on the punishment of individuals for fostering ethnic, religious, cultural or political traditions in the Soviet Union, and on the condition of religious freedom in the Soviet Union and in Eastern Europe. Hearings were held on other CSCE-related topics as well.

The information derived from these various sources is published by the Commission in its periodic reports and in the bi-weekly CSCE Digest.

One of the principal tasks of the Commission is to see that the concerns of Congress are taken into account in CSCE negotiations, and that Members of Congress are kept informed of the progress of negotiations held under CSCE auspices, particularly review meetings such as the one now underway in Madrid, Spain. Two days ago, for example, the Commission met in executive session with officials of the State Department, to discuss the present status of the Madrid negotiations and to inform him of Congressional views on the appropriate balance between security and human rights issues at Madrid when the negotiations resume next week.

The Commission staff also serve in important positions on the U.S. delegations to the CSCE review meetings as well as to other meetings that may be scheduled between review meetings. If agreement can be reached on human rights and human contact issues, then it is possible that the Madrid meeting will call for an experts meeting on security issues. Should such meetings be agreed, the Commission staff will assist in preparations and will be represented on the U.S. delegation. Several of the staff who have been with the Commission since its beginning have more experience with CSCE subject areas and with the internal workings of the CSCE process than any other U.S. Government officials.

Nevertheless, there is a problem with the process of staffing the Commission. Something must be done about the present system which permits the Democratic House members to control nearly all the staff positions.

For many years, while the Republicans were in the minority, I have been trying to obtain minority representation on the Commission staff. In all the years that I have served as a Commissioner, I have not been consulted about the hiring of new staff. Despite the fact that I had requested minority staff and was ranking Republican among the Senators on the Commission, personnel have been hired during the last two years without any Republican consultation of which I am aware.

With the change in Administration there will now be nine Republican and six Democratic Commissioners, with Congressman Fascell continuing as Chairman and myself as Co-chairman.

We are fortunate to have a Commission staff which is both competent and experienced in CSCE issues. I believe it is essential that the professional standards of the staff be maintained. However, there are a few vacancies on the staff at present, and I believe that this would be the optimal time to give the Republican Commissioners equal representation on the staff.

The Republicans are not interested in degrading the professionalism of the staff with non-professional appointments any more than the Democrats were. Meeting the professional standards and requirements of each position must be a matter of trust and practicality between the Democrats and Republicans, with staff selection made by consultation and agreement, for both sides remain committed to carrying out the duties and functions of the CSCE in a professional and ultimately successful manner. The present staff director and a new staff co-director, chosen by the Republicans, can consult on vacancies and requirements, make recommendations to the Commissioners, and these slots can then be filled by competent people, dedicated to the goals of the Helsinki Commission, but responsive to the priorities of members on both sides of the aisle.

Chairman Fascell and I are working together to reach an equitable compromise on this issue. It may be necessary for there to be reductions in present staff in order to make room for the new Republican staff, and keep the total staff numbers down. There is a need for more casework and translation activity by the Commission representing a significant demand on staff time. Perhaps the new positions can be arranged with the old so that expanded capabilities are created without the loss of experienced, long-time commission personnel. In any case, the present situation must change with consequent bearing on the CSCE's appropriation.

STATEMENT OF DANTE B. FASCELL

I am appearing before you today in my capacity as Chairman of the Commission on Security and Cooperation in Europe to discuss the requested appropriations for Commission operations during Fiscal Year 1982.

Public Law 94-304 created the Commission and authorized an appropriation of $350,000 for each fiscal year to remain until expended. The Foreign Relations Authorization Act of 1979 (Public Law 95-426) amended the enacting legislation to increase the amount appropriated to $550,000. Our budget request for Fiscal Year 1982 is $506,000 for an operating budget of $534,000.

Before describing the details of our budget estimates I would like first to review the Commission's background and activities.

The Commission is an independent agency of the United States Government made up of six Members of the House of Representatives, six Senators and three representatives of the Executive Branch one each from the Departments of State, Defense and Commerce, who are to be appointed by the President. At the present time we are awaiting the appointment of our Executive Branch Commissioners.

The Commission was created to review compliance with the Helsinki Final Act, which was signed by President Ford in 1975 and by 34 other countries. We monitor compliance in the areas of human rights, religious liberty, reunification of families, treatment of minority groups, cooperation in the field of cultural and educational exchange, cooperation in trade and economic matters -- including the exchange of scientific and technological information -- notification of military maneuvers, and invitation to observers of military maneuvers.

The Commission was an integral part of the U.S. Delegation to the Belgrade Review Conference along with the Departments of State, Defense, and Commerce and is currently involved in the second review meeting being held in Madrid, Spain. The Madrid

Meeting officially began on November 11, 1980, after a preparatory meeting that lasted two months in which the modalities of the main meeting, including its length, were discussed. It is expected that the main meeting will continue through July of this year but may possibly extend past that date.

The previous review meeting in Belgrade began with a preparatory meeting in the summer of 1977, and the main meeting lasted from October 4, 1977 until March 9, 1978, about six months.

The Commission joined with the State Department in the preparations for the Madrid Meeting, including extensive involvement in frequent bilateral and multilateral consultations with other signatory governments and international organizations such as NATO, the Economic Commission for Europe (ECE), the European Community, the Council of Europe, UNESCO, and the NNA.

EXPERTS MEETINGS

Between Belgrade and Madrid the Commission participated in the three meetings of experts of the CSCE states which were held in conformity with paragraph 4 of the Chapter entitled "Follow-up to the Conference" of the Helsinki Final Act.

At the invitation by the Government of the Federal Republic of Germany, an experts meeting to prepare for the Scientific Forum took place in Bonn in June 1978. Representatives from UNESCO and the United Nations Economic Commission for Europe were invited to share their views. The Scientific Forum itself was conducted in Hamburg last February. Also, in conformity with the mandate contained in the Final Act, and according to a proposal made by Switzerland, a meeting of experts was convened at Montreux on October 31, 1978, where acceptable methods for peaceful settlement of disputes were discussed. Finally, the Government of Malta convened a meeting on questions relating to cooperation in the Mediterranean in February-March 1979. Its mandate was to consider the possibilities and means of promoting concrete initiatives for mutually beneficial cooperation in economic, scientific and cultural fields. The non-participating Mediterranean states were invited to contribute to the work of this meeting.

The duration of these meetings of experts did not exceed six weeks and the results of these meetings are being taken into account at the Madrid Meeting. Commission representatives played active roles on the U.S. delegations to these experts meetings.

BASKET I

The Commission staff has continued to work with the Departments of State and Defense on various aspects of confidence building measures and security and disarmament matters which relate to the Helsinki Final Act. The Commission has met with CSCE experts from the North Atlantic Treaty Organization, North Atlantic Assembly and the Council of Europe on these topics. The Commission continues to monitor closely the implementation of Principle VII, which deals with human rights and fundamental freedoms, as well as the other principles in Basket I pertaining to cooperation among participating states.

The Commission staff meets on an informal basis with various recently arrived emigres and others who are knowledgeable about the human rights situation in Eastern Europe and the Soviet Union. Such meetings in 1980 included Lithuanian human rights activist Vladas Sakalys, who escaped on foot from the USSR in the summer of 1980; Volodymyr Malenkevych, member of the Ukrainian Helsinki Monitoring Group; Soviet psychiatrist and consultant with the Working Group on Psychiatric Abuse, Dr. Aleksandr Voloshanovich; and exiled physicist and member of the Moscow branch of Amnesty International, Andrei Tverdokhlebov.

BASKET II

The Commission has continued its work in the areas covered by Basket II -- economics, science and technology, and the environment. Those Commission staff members who work on Basket II represent a unique U.S. resource since they are the only U.S. officials whose daily activities require expertise in East-West trade as well as human rights policy.

In March of 1980, the Commission held hearings to solicit testimony from government, business and other experts on a number of important trade issues relating to Basket II.

Commission staff members have been official members of U.S. delegations to sessions of the Economic Commission for Europe, the United Nations body charged with carrying out work on key Basket II issues. Commission members have also served as U.S. delegates to ECE ad hoc meetings on specific Basket II issues, and to meetings of the NATO Economics Advisors when that group met to discuss NATO positions on CSCE issues.

Two Commission staff members served on the U.S. delegation to the Basket II working group at the CSCE Review Conference in Madrid.

The Commission staff also participated in private-sector meetings on Basket II, including those sponsored by Poland's Adam Mickiewicz University, the Swedish Institute of Foreign Affairs, and the World Without War Council of New York.

This past January, the Commission produced the first comprehensive review of the new proposals that had been tabled in Basket II during the first session of the Madrid review meeting and developed U.S. negotiating positions on these issues for the second part of the Conference.

The Commission has maintained active contact with many private organizations, business firms and elements of the U.S. Government that have an interest in Basket II. Some of these include the U.S. Chamber of Commerce, the International Chamber of Commerce, the Russian Research Center at Harvard, and the Departments of State and Commerce.

The Commission will attend the ECE's Plenary this April and continue to participate in the meetings of the ECE's Trade Committee. Monitoring the overall ECE work program, including the progress of the so-called "Brezhnev proposals" will also continue to be an integral part of the Commission's Basket II workload.

HUMAN RIGHTS AND BASKET III IMPLEMENTATION

Besides the Basket II hearing described above, in 1980 the Commission held several public hearings on the provisions of the Final Act dealing with human rights and fundamental freedoms

(Principle VII) and the fate of religious believers in the Soviet Union and Eastern Europe (Basket III). There was strong public and media interest in these hearings, creating considerable staff work in duplicating testimony and background materials. In advance of each hearing, the Commissioners were provided with background materials such as biographic information on the witnesses, their statements, and staff research reports on the pertinent issues. These reports, keyed to the subject matter of each hearing, are distributed to the press and public at the hearings and are included in the published record of the hearings which are distributed, in separate volumes, to all Members of Congress, to 2,000 key organizations and individuals on the Commission's special mailing list and the governments of the participating countries.

The Commission held a joint hearing in January with the Subcommittee on International Security and Scientific Affairs and the Subcommittee on Science, Research and Technology to hear from leading experts from the U.S. scientific community and Administration officials on the CSCE Scientific Forum.

Another hearing was held in March 1980, at which time five experts in East European human rights affairs testified on conditions in Poland, Romania, the German Democratic Republic and Czechoslovakia. This hearing, held in advance of the Commission's publication of a comprehensive report on implementation five years after Helsinki, focused on the human rights situation in Eastern Europe since the Belgrade Review Conference. Witnesses included Professor Rudolf Tokes of the University of Connecticut, who gave a general account of the various political and legal mechanisms at work in Eastern Europe; Professor Vlad Georgescu of the Smithsonian Institution's Woodrow Wilson Center, who described conditions in Romania; Professor Hellmuth Nitsche, Chairman of the Society for Human Rights in the FRG who reported on the situation of human and civil rights in the German Democratic Republic; Professor Gordon Skilling of the University of Toronto, who testified on Czechoslovakia; and Tadeusz Walendowski, a recent emigre and former member of the Polish Self-Help Committee, who testified on Poland.

In April, four recent emigres testified on the Soviet treatment of ethnic groups focusing on recent Soviet crackdowns against individuals fostering ethnic, religious, cultural or political traditions which are discouraged by official Soviet government policy. Some experts have pointed to tensions among the hundreds of ethnic groups in the USSR as possibly the country's most volatile domestic problem today. According to trends revealed in the 1979 Soviet census, by the year 2000, one out of three Soviets will be of Moslem origin. Witnesses included Jiri Lina, an Estonian lecturer who gave an account of nationalism in Estonia, Latvia and Lithuania; Aishe Seitmuratova, a Crimean Tatar historian who testified on the campaign of her people to return from Soviet exile to their Crimean homeland; Lev Ulanovsky, a Moscow Hebrew teacher, on the recent upsurge of Soviet anti-Semitism; and Nadia Svitlychna, a Ukrainian writer, who described the Ukrainian struggle for preserving ethnic identity.

Religious rights in the Soviet Union and Eastern Europe were discussed in a hearing held in May 1980. Since the signing of the Final Act, citizens' groups for the rights of believers have been formed in Moscow and Lithuania. Fearful of the massive output of information on various religious communities in the Soviet Union, the KGB has taken repressive measures against several members of the Christian and Catholic committees. Witnesses testifying to that effect were Professor Bohdan Bociurkiw of Carleton University in Ottawa, Canada, who discussed the legal status of religion in the Soviet Union and Eastern Europe; Mrs. Irina Zholkovskaya-Ginzburg, a recent Soviet emigre now living in New Jersey with her husband Aleksandr Ginzburg and their two children, who described the situation of the Russian Orthodox believers; Professor Thomas Bird of Queens College in New York, who testified on the situation of Catholics and Orthodox minorities in the Soviet Union; and Professor Alexandre Bennigsen from the University of Chicago, who testified on the situation of Moslems in the Soviet Union.

A major undertaking of the Commission staff in 1980 was the publication of its report on compliance five years after the signing of the Helsinki Final Act. This report, entitled Implementation of the Final Act of the Conference on Security and Cooperation in Europe: Findings and Recommendations Five Years After Helsinki, revealed that the Soviet Union and its East European allies have failed to live up to their commitments under the Helsinki Final Act, particularly in the areas of human rights. In several Warsaw Pact countries, internal repression has continued -- even intensified -- during the past five years. Since 1978, the report shows, Soviet authorities have embarked on a brutal crackdown on free thinking in the USSR. Commission figures indicated that from 1978 to July 1, 1980, over 280 human rights activists have been imprisoned. Also, arbitrary and inhuman restrictions on the reunification of families still exist. To a very large extent, the atmosphere at Madrid and the prospects for achieving progress in security, trade, cultural exchanges and other areas will be determined by the present international situation. Many Helsinki signatories believe that if Soviet troops remain in Afghanistan, if Sakharov remains banished to Gorky, if members of the Helsinki Monitoring Groups in the USSR remain imprisoned or in exile, then the prospects for a successful conclusion to the Madrid Meeting will be diminished. The Commission hoped that this report, at the very least, would contribute to a frank, thorough review of Final Act implementation.

The Commission often attends and organizes meetings for visiting diplomats and CSCE experts from signatory countries. On February 6, 1980, the Commission organized a briefing for Commissioners with a delegation of 41 members from the Council of Europe. This meeting provided a unique opportunity for a vigorous exchange of views on CSCE-related questions, including human rights and the effects of the Soviet invasion of Afghanistan.

In April of 1980, the Commission undertook a study mission to Italy and Israel where a 21-item Russian-language questionnaire was distributed to approximately 1,000 recent Soviet emigrants for the purpose of documenting Soviet emigration practices.

Seven members from the North Atlantic Assembly, headed by Peter Corterier of the FRG, attended a working luncheon meeting with the Commission in June 1980. The working group of the NAA was in Washington to discuss preparations for the Madrid Meeting.

The most recent Commission meeting was held on January 13, 1981 with Ambassador Franz van Dongen, head of the Dutch delegation to the Madrid Meeting. Ambassador van Dongen was in Washington to discuss plans for the second phase of the conference. The Dutch, having recently assumed the presidency of the ten-nation European Economic Community, will play a major role in the development of Western positions at Madrid.

From time to time, the Commission staff organizes meetings with individuals who have expertise and information on various Helsinki-related issues or with recent emigres to gather additional information. For example, on September 15, 1980, exiled Soviet physicist and member of the Moscow Helsinki Group, Yuri Yarym-Agaev, attended a briefing for the Washington press sponsored by the Commission. Mr. Yarym-Agaev discussed the atmosphere in Moscow before the Olympics (when he was ordered out of the country), the role of scientists in the Soviet human rights movement, and future strategies for aiding Soviet human rights activists.

Staff members often meet informally with individuals who are attempting to be reunited with relatives in Eastern Europe who are denied entry visas to East European countries or who have personal knowledge of non-compliance with Final Act provisions in some signatory states. These various meetings contribute valuable information on aspects of implementation of the Helsinki Final Act for the Commission's reports.

TRANSLATIONS, COMPILATIONS AND PUBLICATIONS

The Commission receives a great deal of material from various unofficial groups and individuals in the Soviet Union and Eastern Europe. In addition to using these letters, appeals and reports to document human rights problems in these countries, the staff also does extensive translations of such materials. Some of these documents serve as the bases for speeches, statements and articles published by the Commissioners or staff. Often, the staff shares these materials and/or translations with private human rights organizations, such as Amnesty International, the Committee for the Defense of Soviet Political Prisoners, Khronika Press, and Keston College.

The Commission staff has issued a series of publications of unofficial documents from citizen groups in the USSR and in Eastern Europe. Four such volumes, most of which were translated by the Commission staff, were released in 1977 and 1978. These volumes have been distributed to Members of Congress, the press, private organizations, and concerned individuals. Recently, as part of its preparation for the Madrid Meeting, the Commission staff translated and edited a survey of Moscow Helsinki Group documents written by Lyudmila Alekseeva, a Western representative of the Group. This 25-page survey of documents is organized by topics such as "national rights" or "socio-economic rights" and also includes a brief description of the Group's working methods. This survey was made available on a limited basis to interested people during the Madrid Meeting and will be published later this year.

In an effort to keep the public continually informed of CSCE events, the Commission publishes a semi-monthly newsletter, the CSCE Digest. The purpose of this publication, in the broadest sense, is to summarize news and editorial comment relating to the various provisions of the Final Act that appears in current U.S. and East and West European media. Additionally, the Digest chronicles CSCE-oriented events and activities of the Commission and other CSCE-related organizations. The Digest is circulated to

Commissioners, Executive Branch officials, members of the press and the general public interested in CSCE matters.

MISCELLANEOUS ACTIVITIES

The Commission staff regularly responds to Congressional inquiries regarding the work of the Commission, the CSCE process, issues affecting East-West relations, human rights in Eastern Europe and to requests for information on the status of individual cases from Congressional offices. In addition to supplying this information, the Commission staff suggests action a Member might take, provides materials for the preparation of speeches and statements in the Congressional Record and drafts letters or statements for the Member's use. If the staff is unable to furnish the necessary information, it will refer the Member's office to the appropriate private organization or government agency. The Commission also functions as a clearinghouse for information about Congressional activities on U.S.-European human rights and other Helsinki-related issues. Often, Congressional staff members contact the Commission to inquire about what other Congressional offices have been active in a particular case and what actions the Commission has taken on the case. Many offices routinely send the Commission copies of letters they have sent or statements they have made regarding individual cases, so that the Commission will be kept abreast of these efforts and be better able to inform other offices.

The Commission has supplied background material for Members of Congress participating in international meetings at which Helsinki-related issues are to be discussed or traveling to Eastern Europe or the Soviet Union. For example, the Commission works closely with the House Foreign Affairs Committee, preparing briefing materials for U.S. delegations to meetings of the Inter-parliamentary Union and other international meetings. Similar work is done in conjunction with the Senate Foreign Relations Committee. The Commission has also assisted in the drafting and supporting of a variety of Congressional resolutions.

THE MADRID MEETING AND FUTURE ACTIVITIES

As with the Belgrade meeting, a large proportion of the Commission's staff and resources is being devoted to the Madrid review conference at this time. A number of staff members were assigned full time to the U.S. delegation for the first part of the meeting, and Commissioners and other interested Members of Congress made a working visit during the Thanksgiving break. The Staff Director is one of the Deputy Chairmen of the U.S. delegation. Also, during the first phase, from November 11 through December 19, the White House appointed 30 "public members" -- private organizations and individuals primarily concerned with the implementation of the human rights provisions of the Helsinki Final Act -- which the Commission staff assisted and briefed during their stay in Madrid.

In a limited capacity the staff has also attended the second phase which lasted from January to April 10 and will be a vital part of the meeting when it reconvenes on May 5.

There is a good chance that the Madrid meeting will mandate several meetings of experts to take place before the next review meeting is held. Commission staff will play a prominent role in such meetings, as they have in the three experts meetings which have occurred since the Belgrade review meeting.

DOMESTIC COMPLIANCE

In the fall of 1979, the Commission issued a comprehensive report on U.S. compliance with the Helsinki accords, Fulfilling Our Promises: The United States and the Helsinki Final Act. In this major undertaking, the Commission responded to a broad range of charges of U.S. violations of the CSCE Final Act -- from discrimination against various ethnic and racial minority groups to maltreatment of prisoners and alleged fabrication of criminal charges against political activists. These charges have principally come from East European signatories and the Soviet Union as well as some private civil rights groups in the United States. In preparing the report, the Commission had the assistance of U.S. Government departments and agencies. Additionally, representatives from government agencies and private civil rights groups were the main witnesses at the Commission's April 1979 hearings on domestic compliance. Information contained in these Congressional testimonies was also incorporated in the report. The Commission has continued to devote major attention to the issue of United States compliance with the Helsinki accords following the issuance of this first comprehensive study. The Commission's report, Implementation of the Final Act of the Conference on Security and Coopertaion in Europe: Findings and Recommendations Five Years After Helsinki published on August 1, 1980, updated some of the material contained in the 1979 report on domestic compliance.

The Commission's monitoring of the U.S. record has evoked increasing interest among civil rights and other private domestic groups, including the Helsinki Watch organizations which testified at the April, 1979 hearings. We will be working intensively with responsible U.S. Government agencies to respond to criticisms of the U.S. implementation effort and to improve the U.S. record wherever possible. The Commission's report makes the United States the first Helsinki signatory to issue a comprehensive study of its own compliance record. We hope others will follow our example.

CREATION OF COMMISSION

Mr. Fascell. As you recall, the Helsinki accord was a special legislative act which created a commission, a rather unusual creature, composed of Members of the House, Members of the Senate, and members of the administration. We got past some rough spots; people were saying things like why can't the Foreign Affairs Committee do these kinds of things, and why do you have to raise a constitutional question by including members of the administration on a commission of this kind? In effect, why do you need a commission to monitor the Helsinki accords when it is a normal international issue that can be taken care of by other ways and other committees of the Congress.

Experience has now taught us that the answer to the question was a proper answer, that the special focus which this Commission helps create with respect to Helsinki is a needed focus. It would get lost in all of the other issues and works of a major committee. It needs attention of its own.

In addition, we found out we could better serve our colleagues. All of us get inquiries constantly by individuals, here, there, wherever, even from behind the Iron Curtain, about the troubles they are having with reunification of families or other problems.

The Commission has been a focal point, a kind of liaison, if you will, with our own Government and other governments in keeping track of these cases. As a matter of fact, I dare say, the system we have created has about 4,500 cases in it right now on a current basis. They come from all over—from our colleagues in the Congress, from constituent groups in the United States and even from overseas. We try to clear those up and stir-up interest, trying to resolve those cases not only for our own Government but wherever we feel we can do some good.

In addition to that, we hold hearings where we focus specifically on this whole problem, and the law says we must have special emphasis on the human rights question. So we hold hearings, prepare documents et cetera.

The President is required to report to the Commission and to the Congress on the status of human rights among the signatory countries, and the Commission on its own prepares other reports. We receive documents from behind the Iron Curtain which we translate and disseminate. In short, in the years we have been in operation, we have become a focal point for the whole question of implementation of the Helsinki accords and the struggle for human rights.

I won't say that we are the only group but we are certainly one of the most highly visible and recognized groups in the signatory countries.

We took the lead in promoting public members at the followup conferences, for example. We have urged that other countries include public members in their delegations. We have urged and obtained approval for Members of the Congress to be on the U.S. delegation. For example, Senator Dole and I automatically are vice chairmen, by arrangement with the administration, and our staff is integrated with the staff of the U.S. Department of State and, as a matter of fact, we are getting ready to go back to where the review conference is still going on.

STAFFING

In this fashion, we have maintained the impetus and the emphasis on the whole question of human rights. Our budget of $506,000 for fiscal year 1982 is a small budget, Mr. Chairman, but we think it is extremely worthwhile. Most of that, as you can imagine, goes to personnel. We have 14 slots and the rest of it is normal kind of housekeeping things; printing, suplies, et cetera, all of the necessary expenses to keep the operation going. We are small, but we are highly efficient and we have an unusual staff in terms of capability. If you have time to review the biographies of our staff, I think you will be very much impressed with the high caliber of people. We have tremendous language capability, the principal being Russian. But we don't stop there. We have French, Italian, Spanish, Serbo-Croation, and a few others that I can't remember myself. It is a kind of staff that can move constantly anywhere in Europe and maintain communication. We have done that. Our job is to work with the Department of State and the Congress to insure a continuing emphasis on this whole struggle for human rights.

Now, to address the question which Senator Dole has in his remarks with respect to staffing. Senator Dole was concerned because he hasn't been consulted with respect to staffing since he has been on the Commission. That is true, he was not consulted in the early days when this was put together. My cochairman, Clai Pell and I, had a personnel committee, as a matter of convenience, composed of two Democrats and two Republicans. We screened all the people that we hired. It was strictly on the basis of the best people we could get, with suggestions coming from whoever wanted to make a suggestion.

Now, with the change in the Senate, of course, we have a little different situation. Senator Dole rightly wants some input with respect to staff, and we are perfectly willing to give him that input. But we have been held up because the Senator was out of commission. Fortunately, he is back and doing well. As soon as he can catch up we will have no difficulty in accommodating whatever ideas he may have with respect to the talent he wants in personnel.

We do have one difference of opinion, however, which I think needs to be laid on the table.

The Senator has been suggesting the idea of having a minority staff as minority staff. We don't think this Commission lends itself to that kind of division. We are perfectly willing to have people designated or suggested by the Senator or the Republicans, for that matter, as part of a staff. We have Republicans on the staff now which were suggested by other Republicans, but not by Senator Dole. We are perfectly willing to abide by his suggestions as soon as he has an opportunity to make some. We are not convinced, however, the idea of codirectorship really is useful. That is something the Senator and I have not had a chance to discuss yet. That is about where we are right now. We have the desire, and want to accommodate Senator Dole.

We have some vacancies for him to put some people in. We would hope that he would see the wisdom of not separating the staff. We need to have a highly professional, integrated staff. There are no really partisan issues in this matter that I can detect. It is simply reaching an understanding on our views with regard to whatever is going on either at the Madrid Conference or the Belgrade Conference or the next conference and working with the Department of State and people who have responsibility in this area to be sure we have some input with respect to U.S. policy.

Basically that is it. The administration runs the policy and if we have strong opinions, the strength of any opposition, let's say, or the strength of a different view than that of the administration would only come if the Commission were united.

Now, one of the factors that has to go into this consideration is that we serve a lot of constituent groups around the country. I don't have to name them all, but I can assure you there are a lot of them out there. One of the better jobs we have done is to maintain good direct communication with all those constituent groups out there, hopefully to keep our colleagues happy.

I think we have done that. We have had no complaints that I know of. We work very closely with them, with the world organizations, as well as the Helsinki Watch Group in New York, and we try to get our job done. That is basically it.

Senator DECONCINI. How many members are on the Commission?

Mr. FASCELL. We have six from the Senate and six from the House.

Senator DECONCINI. What is that broken down to?

Mr. FASCELL. Four Democrats and two Republicans on the House side and two Democrats and four Republicans on the Senate side.

SOVIET AGGRESSION

Senator WEICKER. The only question I have is what the worth of this agreement is in view of the Soviets' invasion of Afghanistan, banishment of their internal monitoring groups, and their threatening moves around Poland. I must confess, I voted for this when it came to the Senate. I think it was a bad vote. I think it was a bad idea, one of the few I have regrets about. It has nothing to do with your funding. But I really must confess, I think it is a sham insofar as the Soviet Union is concerned; the fact they signed this means absolutely nothing when you measure it against what they have done since they signed it.

Mr. FASCELL. No question about it. The Soviet attitude and action hasn't changed a bit as far as I can tell either. The old saying goes, "When you have a lemon, you make lemonade out of it." I started out with a great deal of skepticism with regard to the Helsinki accords, and maybe my vision is clouded because I have just been involved in the work, but I think there is a value in this sense; that to hold discussion of violation of the Helsinki accord, which basically is without any teeth in it, no enforcement capability, the meetings have to operate by consensus. You can't even break up a meeting without having consensus that you are going to break up. They have passed no substantive acts of any kind. So one would be tempted to say this is a useless debating society, but it has one big value. At Belgrade, for example, when we were trying to identify specific cases of violation with respect to individuals in the Soviet Union, a lot of countries were very reluctant to take that direct approach, the United States was the only country, and that was by a great deal of work on the Commission's part because our people in the State Department weren't convinced it was a great idea, thought it a small matter, kind of a drop of water in the ocean, but the United States was the only country. Now we come to Madrid and we find five or six of the allies perfectly willing to stand out there and say: Hey, you did so and so with this guy and this is a violation of such and such and it just went on.

In short, what it has done is legitimatize the whole discussion of the violation of human rights in the sense it is laid down in the Helsinki accords or in the U.N. documents, or wherever they are, and it has laid it on the table so you no longer restrict it to kind of government-to-government diplomatic demarche, or what not. Anywhere you go in the international community now, you are looking at your counterpart, and right away, for whatever it is worth, you have got that guy on the defensive with respect to the Helsinki accords. You have a place to take off from in your discussion. Not only that, if you find it involves more than two governments, you have a colleague on the other side who has already been briefed the same way, so you lay it out, you discuss it. That is one value.

BENEFITS OF THE COMMISSION

Senator WEICKER. What does that get us, Dante? Does it really even get us some good world publicity?

Mr. FASCELL. It does. It is a funny thing, but it gets some confidence. It does more than that. We are able to tie in other aspects of our diplomatic initiatives with various countries who work on cases.

I don't want to pick a particular country right now but let me say on the record that we have been instrumental, we the commission and the U.S. Government, have been instrumental in resolving hundreds, maybe thousands, I have to be very careful, I don't want to exaggerate, of cases where I am sure if we had not had that pressure externally, as well as diplomatically, we would not have had as good results. I don't think any one issue could take claim for that result. I think it is a combination of everything in terms of capability and attitude of the United States.

But I am convinced today that you have to have not only the diplomatic pressure, you have got to have this external pressure. There is some value in that, and that the Soviets pay some attention to it. And if they don't, at least our colleagues in other governments do. It has that kind of value.

One final thing on that point: I am not justifying here the value of the Helsinki accords, but the value of the work involved in pursuing what we are pursuing, and that is this: we have had testimony before the commission a lot of people who have come out from behind the Iron Curtain. They testify and have asked and answered questions and all witnesses before the Commission have always come down to the bottom line, which is, we are with you but are we helping you, and what is it that we can do that will really help? I think if you go through the record of the years of hearings on this Commission, you will find one common thread, every one of those people say: "Don't stop what you are doing. It may appear to be useless to other people, but we are convinced beyond any question that it is the only chance we have got." The fine things they say about this Commission are very flattering, indeed, but they are convinced, they say:

> Look, we lay our life on the line, we make that determination and we are willing to continue doing it. And for every one of us they move out and they lock in jail, they harass, whatever, there will be another one to take his place. But the thing that keeps us going and the only chance we have got is that we know on the outside we have the Commission and other countries that are still fighting.

We, on the Commission, have really come to believe that is an essential element of this whole struggle.

Senator DECONCINI. Mr. Chairman, I am convinced.

Senator WEICKER. I think probably, at least in my opinion, I think the damage was done when we signed the agreement. In fact, in effect gave——

Mr. FASCELL. Away the store.

Senator WEICKER. Not gave away the store, but in the minds of many behind the Iron Curtain, we legitimized the situation when we signed that paper. I don't think there is much further that can be done.

Mr. FASCELL. It might be that you are right.

Senator WEICKER. Thank you very much. We appreciate your testimony before the committee.

Mr. FASCELL. Thank you, gentlemen.

SMALL BUSINESS ADMINISTRATION

STATEMENT OF MICHAEL CARDENAS, ADMINISTRATOR

ACCOMPANIED BY:
    HARRY S. CARVER, CONTROLLER
    EDWIN T. HOLLOWAY, ACTING ASSOCIATE ADMINISTRATOR FOR FINANCIAL ASSISTANCE
    CHARLES HERTZBERG, ACTING DIRECTOR, OFFICE OF DISASTER ASSISTANCE

BUDGET REQUEST

Senator WEICKER. Next is the Small Business Administration, Mr. Cardenas.

Michael, we might as well get married to each other as many times as we have seen each other this week in hearings.

Mr. CARDENAS. I have to learn how to play tennis. I would much rather play tennis in the morning.

Senator WEICKER. As I indicated our next request is that of the Small Business Administration.

The request consists of budget authority totaling $624.2 million, which is $940.1 million less than fiscal year 1981.

Appearing on behalf of this request is Michael Cardenas, Administrator; Harry Carver, Controller; Edwin Holloway, Acting Associate Administrator for Financial Assistance; and Charles Hertzberg, Acting Director, Office of Disaster Assistance.

We are pleased to hear your statement with regard to your request.

Mr. CARDENAS. Senator, in the interest of time, I know you have a couple questions to ask. I will forego reading the statement primarily because of the burning spring effect on my eyes. I do want to state we are pursuing the oncoming budget consistent with Mr. Reagan's economic plan. I do want to say I do favor direct funding if we can keep it at the interest rates close to those of the guarantee program.

PREPARED STATEMENT

Other than that, I think we are following the Reagan administration's desires to date. Of course, we submit these statements to OMB for review. We have not been adversaries in any situation, but certainly I would not hesitate to go to OMB or the President's office with differences we felt were necessary. With that I would like to get into questions.

[The statement follows:]

Statement of Michael Cardenas

IT IS A PLEASURE TO APPEAR BEFORE YOU TO DISCUSS THE SMALL BUSINESS ADMINISTRATION'S FY 1982 BUDGET REQUEST. THE REQUEST CONSISTS OF BUDGET AUTHORITY FOR FOUR ITEMS AS FOLLOWS:

(1) BUSINESS LOAN AND INVESTMENT FUND BORROWING AUTHORITY................	$387,000,000
(2) LEASE GUARANTEES REVOLVING FUND CAPITAL APPROPRIATION..............	4,000,000
(3) SURETY BOND GUARANTEES REVOLVING FUND CAPITAL APPROPRIATION..............	22,200,000
(4) SALARIES AND EXPENSES DIRECT APPROPRIATION...............	210,969,000

MR. CHAIRMAN, WITH YOUR PERMISSION, BEFORE GETTING TO THE SPECIFIC APPROPRIATION REQUEST ITEMS, I WOULD LIKE TO BRIEFLY HIGHLIGHT OUR FY 1982 PROGRAM. WITHIN THE CONTEXT OF THE ADMINISTRATION'S OVERALL ECONOMIC PLAN, WE FEEL THAT THE SMALL BUSINESS ADMINISTRATION HAS BEEN TREATED FAIRLY AND THAT OUR FY 1982 REQUEST IS SOUND AND WILL CONTRIBUTE TO A HEALTHY, EXPANDING ECONOMY.

CONSISTENT WITH GENERIC POLICY CHANGES, WHICH APPLY ACROSS THE SPECTRUM OF FEDERAL LENDING AND LOAN GUARANTEE PROGRAMS, DIRECT LENDING HAS BEEN REDUCED 25% FROM THE ORIGINAL FY 1982 PLAN TO $260 MILLION. THE REVISED FY 1981 LEVEL HAS BEEN REDUCED FROM THE PREVIOUS BUDGET LEVEL OF $346 MILLION TO $304 MILLION. THE GUARANTEED LENDING PROGRAM HAS ALSO BEEN CURTAILED TO A LEVEL OF $3.15 BILLION. HOWEVER, IT'S INTERESTING TO NOTE THAT THIS FY 1982 LEVEL IS LESS THAN 1% BELOW THE ACTUAL FY 1980 GUARANTEED LENDING PROGRAM.

FOR THE LOAN PROGRAMS, WE ARE AGAIN PROPOSING, AS PART OF OUR LEGISLATIVE PACKAGE, AUTHORITY TO CONSOLIDATE THE EXISTING LOAN PROGRAMS SO AS TO PROVIDE THE ADMINISTRATIVE FLEXIBILITY REQUIRED BY THE OVERALL CURTAILMENT OF LENDING. ALL DIRECT AND IMMEDIATE PARTICIPATION LOANS MADE UNDER THE PROPOSAL WILL HAVE A UNIFORM INTEREST RATE ESTABLISHED BY SBA PURSUANT TO STATUTORY FORMULA. WITH THE UNIFORM INTEREST RATE, THE ARTIFICIAL DEMAND ENGENDERED BY SUBSIDIZED INTEREST RATES, AND CONFUSION OVER THE INCONSISTENCY AND INEQUITY OF VARIABLE INTEREST RATE PROGRAMS, WILL BE ELIMINATED. IT

IS FELT THAT ANY DETRIMENTAL IMPACT CAUSED BY INCREASED INTEREST RATES CAN BE OFFSET IN THE SHORT-RUN BY OUR PROPOSED LEGISLATION STRETCHING OUT THE TERM OF THE LOANS, AND IN THE LONG-RUN, BY A STRONG, HEALTHY ECONOMY WITH STEADILY DECLINING INTEREST AND INFLATION RATES.

NO NEW AUTHORITY IS REQUESTED FOR THE DISASTER PROGRAM FOR FY 1982. IT IS FELT THAT WITH THE TRANSFER OF FARM LENDING AND ADOPTION OF OUR LEGISLATIVE PROPOSAL TO TERMINATE NON-PHYSICAL DISASTER ASSISTANCE FROM THE DISASTER LOAN FUND, AND TO INCLUDE THIS TYPE OF LENDING UNDER THE REGULAR BUSINESS LOAN PROGRAM, WE WILL BE ABLE TO SUPPORT THROUGH REPAYMENTS A PROGRAM LEVEL OF $440 MILLION FOR FY 1982. THE FY 1981 SUPPLEMENTAL FOR $780 MILLION, WHICH WAS PREVIOUSLY SUBMITTED, HAS BEEN WITHDRAWN. ACCORDINGLY, WE SHALL HOLD THE FY 1981 PROGRAM WITHIN THE $2.07 BILLION CURRENTLY AVAILABLE AND STILL ASSURE THAT ASSISTANCE IS PROVIDED TO DISASTER VICTIMS WHO ARE MOST DESERVING.

FOR ACTIVITIES FUNDED UNDER SALARIES AND EXPENSES, THE STANDARD GOVERNMENT-WIDE REDUCTIONS FOR TRAVEL AND CONSULTING SERVICES HAVE BEEN ACCOMMODATED ALONG WITH MODERATELY REDUCED EMPLOYMENT LEVELS. THE SMALL BUSINESS DEVELOPMENT CENTER PROGRAM WILL BE TERMINATED WITH A SAVINGS OF $5.4 MILLION AND THE AGENCY'S MANAGEMENT ASSISTANCE EFFORT WILL BE REFOCUSED TO MORE CONVENTIONAL AND LESS COSTLY MODES. TIES WITH THE ACADEMIC COMMUNITY WILL BE MAINTAINED THROUGH CONTINUATION OF THE SBI PROGRAM AT THE CURRENT $1.5 MILLION LEVEL. IN THE WOMEN'S BUSINESS ENTERPRISE PROGRAM A REDUCTION OF $4.8 MILLION FOR OUTSIDE CONTRACTING IN SUPPORT OF THE PROGRAM HAS BEEN MADE. FINANCIAL, PROCUREMENT, AND MANAGEMENT ASSISTANCE WILL BE PROVIDED TO WOMEN-OWNED BUSINESSES THROUGH EXISTING PROGRAM STRUCTURES AS RECOMMENDED BY THIS SUBCOMMITTEE AND LATER THE CONFERENCE REPORT ACCOMPANYING HR 7584 LAST FALL.

ALTHOUGH THERE HAVE BEEN REDUCTIONS OF $2 MILLION AND $4 MILLION IN THE 7(J) CONTRACT AND BUSINESS DEVELOPMENT EXPENSE ITEMS, RESPECTIVELY, IT IS FELT THAT THIS WILL HAVE NO DETRIMENTAL EFFECT ON THE OVERALL EFFECTIVENESS OF THE 8(A) PROGRAM. THE PROJECTED PROGRAM LEVEL WILL REMAIN AT SOME 5,500 CONTRACT AWARDS WORTH $1.5 BILLION. I ASSURE THIS COMMITTEE, THAT I AM PERSONALLY COMMITTED TO WORKING ON

AND FINDING SOLUTIONS TO THE PROBLEMS BESETTING THIS PROGRAM. SPECIAL EMPHASIS WILL BE PUT ON THE BUSINESS DEVELOPMENT ASPECTS OF THIS PROGRAM TO ENSURE ORDERLY PROGRESSION TOWARD PROGRAM COMPLETION AND ECONOMIC MAINSTREAMING OF INVOLVED COMPANIES. IN ADDITION, WE INTEND TO TAKE STEPS TO PROVIDE A MORE EQUITABLE DISTRIBUTION OF CONTRACT DOLLARS AMONG PORTFOLIO COMPANIES.

NOW, MR. CHAIRMAN, LET ME DISCUSS THE SPECIFIC APPROPRIATION ITEMS.

BUSINESS LOAN AND INVESTMENT FUND

WE ARE REQUESTING BORROWING AUTHORITY OF $387 MILLION FOR FY 1982 FOR THE BUSINESS LOAN AND INVESTMENT FUND. THIS COMPARES WITH $609 MILLION IN THE FORM OF A CAPITAL APPROPRIATION PROVIDED IN FY 1981 AND REFLECTS THE RESULT OF REDUCED FEDERAL LENDING LEVELS. TOTAL OBLIGATIONS FOR FY 1982 WILL BE $941.4 MILLION OFFSET BY REPAYMENTS AND OTHER FINANCING OF $381.4 MILLION LEAVING $560.0 MILLION IN NET OBLIGATIONS. WITH PROJECTED OPENING AND YEAR-END UNOBLIGATED BALANCES OF $178.4 MILLION AND $5.4 MILLION, RESPECTIVELY, THE $387 MILLION BORROWING AUTHORITY WILL BE REQUIRED TO ACHIEVE OUR PROGRAM LEVELS. OUTLAYS ARE ESTIMATED AT $525.0 MILLION FOR FY 1982 COMPARED TO $511.3 MILLION IN FY 1981.

LEASE GUARANTEES REVOLVING FUND

WE ARE REQUESTING $4 MILLION IN CAPITAL FOR THE LEASE GUARANTEES REVOLVING FUND. NO NEW COMMITMENTS HAVE BEEN MADE UNDER THIS PROGRAM IN SOME YEARS; HOWEVER, NEW CAPITAL IS REQUIRED TO HONOR CLAIMS ON PRIOR YEAR GUARANTEES.

SURETY BOND GUARANTEES REVOLVING FUND

WE ARE REQUESTING A CAPITAL APPROPRIATION OF $22.2 MILLION FOR THE SURETY BOND GUARANTEES REVOLVING FUND. THIS COMPARES TO $30.0 MILLION IN CAPITAL PROVIDED IN FY 1981 AND WILL FINANCE A PROGRAM LEVEL FOR FY 1982 ESTIMATED AT 15,000 CONTRACTS INSURED IN THE AMOUNT OF $1.2 BILLION, AS COMPARED TO THE PREVIOUS BUDGET LEVEL OF $1.6 BILLION AND THE REVISED LEVEL OF $1.4 BILLION FOR FY 1981. OUTLAYS ARE ESTIMATED AT $31.0 MILLION FOR FY 1982 COMPARED TO $36.0 MILLION IN FY 1981.

SALARIES AND EXPENSES

A DIRECT APPROPRIATION OF $210.969 MILLION IS REQUESTED FOR FY 1982 FOR SALARIES AND EXPENSES OF THE SMALL BUSINESS ADMINISTRATION. IN ADDITION, $10.7 MILLION IN TRANSFER AUTHORITY FROM THE DISASTER LOAN FUND FOR DISASTER LOAN MAKING WILL BE REQUIRED. WHEN THE DISASTER LOAN MAKING AMOUNTS ($24.007 MILLION IN FY 1981 AND $10.7 MILLION IN FY 1982) ARE EXCLUDED, THE FY 1982 REQUEST REFLECTS A MODEST INCREASE OF $.429 MILLION OVER THE REVISED FY 1981 TOTAL AFTER TAKING INTO ACCOUNT THE FY 1981 PROPOSED RESCISSION OF $1.405 MILLION.

THE REQUEST REFLECTS A REDUCTION OF 165 IN OUR AUTHORIZED PERMANENT POSITIONS FROM 4,471 IN FY 1981 TO 4,306 IN FY 1982, AND IN OUR AUTHORIZED YEAR-END PERMANENT CEILING FROM 4,383 TO 4,218.

MR. CHAIRMAN, THIS COMPLETES MY BRIEF REVIEW OF SBA'S BUDGET REQUEST FOR FY 1982. WE WILL BE PLEASED TO ANSWER ANY QUESTIONS THE COMMITTEE MAY HAVE.

COMMENT ON PRESIDENT'S SPEECH

Senator WEICKER. I must confess, I am not going to lend my chair, in the sense of chairing the Committee on Small Business, to what I consider to be a hypocrisy. I sat there during the President's speech last night and I certainly commend him, first, for having the courage to come and give the speech, and second, for the eloquence of a good portion of it. But I will tell you, when I see the kind of cuts that are proposed for the Small Business Administration, I am sorry, the dichotomy of that speech with what is done is far too great. I am not asking you to comment on it. I want to make it clear that I expect this committee and also the authorizing committee of which I am chairman to take a careful look. If we are going to start making statements as to how the small businessman is going to be better off with this program, either we are going to back it up, or if the action isn't there, we are going to say the action is not there. I am more than a little upset when I see what is committed to in terms of programs and, obviously here, what has not been committed with respect to financing.

NEW DIRECTIVES

Since February, the Small Business Administration has implemented new regulations or field directives which have had a substantial impact on programs and the agency's constituencies. I have several questions concerning these new directives:

First, are these directives and regulations basically implementing the President's program of budgetary savings for 1981?

Mr. CARDENAS. I believe they are.

Senator WEICKER. Were these new directives initiated pursuant to instructions from OMB?

Mr. CARDENAS. Yes.

Senator WEICKER. Will you provide the committee with any correspondence from OMB concerning implementation of the President's program?

Mr. HOLLOWAY. We will be pleased to submit that.

[The information follows:]

MAR 24 1981

Honorable Roger H. Jones, Jr.
Acting Administrator
Small Business Administration
Washington, D.C. 20416

Dear Mr. Jones:

Now that the 1982 Budget reflecting President Reagan's economic recovery program has been transmitted to the Congress, I wish to advise you formally of the revised budget allowances and significant policy determinations for your agency. The President has approved for your agency budget authority for 1981 and 1982 as shown on the enclosed pages of the budget accounts listing supporting the 1982 Budget Revisions.

In addition, the approved limitations for direct loan and loan guarantee programs are included (by budget account) in Enclosure A. Enclosure A also shows estimates of budget authority and outlays for 1983-1986 which are based on the decisions reached thus far by the President. However, you should recognize in your planning that the President is committed to substantial new reductions in outlays for 1983 through 1986. In fact, he is committed to a 1983 outlay total that is approximately $30 billion below the amounts that were specifically identified in agency totals in his revised 1982 Budget. This means that many agencies will have to plan on further program reductions beginning in 1983 which will bring budget authority and outlays substantially below the numbers shown.

As President Reagan has stated, the review process through which the new allowances were developed was, of necessity, much more compressed than would normally be desirable and was not as comprehensive as will be our future budget reviews. The results of the review do achieve this Administration's initial goal to reduce the growth in the size of Government; however, as indicated above, major new reductions will be required in FY 1983 and future years. Now that the budget revisions have been transmitted to the Congress, I ask that you take all of the actions necessary to ensure that the operations of your agency are based on the President's decisions and his commitment to bring Government spending under control.

Significant Policy Determinations

You have already been advised of the President's decision to withdraw the 1981 supplemental for the Disaster Loan Fund and of the need for revised policies and regulations to assure that the Fund will operate within its existing resources for the entire year. You are reminded that such revised policies should be submitted to this Office for review as soon as possible but no later than March 15, 1981.

Except as modified by the 1982 Budget Revisions or this letter, policies set forth in the January Budget and the subsequent allowance letter will continue in effect. This includes the prohibition against using Section 503 debenture proceeds in cooperation with tax-exempt financing until a procedure is developed to preclude the indirect guarantee of such tax-exempt securities.

Ceilings on civilian employment for your agency are set forth in Enclosure B. The President has assigned these ceilings in keeping with his commitment to reduce the size of the Federal work force and to increase its efficiency. We expect that the ceilings provided will accomplish the objectives stated in the President's memorandum of January 20, 1981, placing a hiring freeze on the Executive Branch of the Government. Therefore, the President has decided that you may lift or moderate the hiring freeze for your agency provided the revised lower employment ceilings in Enclosure B are not exceeded. In so doing, you should also assure that the approved staffing increases for loan portfolio managment are not reduced in order to reach the lower personnel ceilings. Note that employment ceilings for 1981 are for the end-of-year and ceilings for 1982 are for full-time equivalents (FTE) or workyears.

Pending "hardship" exceptions to the hiring freeze should now be resolved at the agency level according to the criteria contained in my January 29, 1981, memorandum on the Federal Civilian Hiring Freeze.

In conjunction with the moratorium on procurement of certain equipment, your agency was required to submit a plan for reducing procurement of equipment during fiscal year 1981, as prescribed by OMB Bulletin No. 81-9. Your plan is currently under review; thus, procurement of items covered by the moratorium should not be resumed until you are notified that the plan has been approved.

I ask that your agency continue to identify major policy and program changes that will provide additional support to the President's comprehensive economic program to reduce spending, reduce taxes, and to remove unnecessary regulatory burdens.

Each official in your agency is expected to support actively the proposals set forth in the revised budget and summarized in this letter and its enclosures, subject only to such changes as may be authorized by Presidential action. This support should be given in testimony before congressional committees and their staffs, and in speeches and meetings with outside groups.

Many thanks to you and your staff for your efforts and cooperation in preparing the revised 1982 Budget.

Sincerely,

David A. Stockman
Director

Enclosure A

Approved limitations for direct loan and loan guarantee programs
(in millions of dollars)

	Direct loan obligations		Loan guarantee commitments	
	1981	1982	1981	1982
Disaster Loan Fund	--	440	--	--
Business Loan and Investment Fund	--	260	--	3,150
Surety Bond Guarantee Revolving Fund	--	--	--	1,200
Pollution Control Equipment Contract Guarantee Revolving Fund	--	--	--	95
Small Business Administration, Totals	--	700	--	4,445

Multi-year Planning Estimates
(in millions of dollars)

	1983	1984	1985	1986
Budget Authority	837	854	861	868
Outlays	656	688	710	728

Details concerning the derivation of these totals can be provided by staff of this Office.

Enclosure B

Employment Ceilings	Sept. 1981 (End-of-year positions)	1982 Full-time equivalents (workyears)
Total employment, excluding disadvantaged youth and personnel participating in the Worker-Trainee Opportunity Program (WTOP)..	4,670 1/	4,704
Full-time permanent employment, excluding personnel participating in WTOP............................	4,383	4,317

These ceilings represent, for your agency:

a. For September 30, 1981, upper limits on the number of employees, and

b. For FY 1982, the maximum number of full-time equivalents (workyears) allowed.

These ceilings cover all employment in your agency except for disadvantaged youth and personnel participating in the Worker-Trainee Opportunity Program.

1/ The total employment ceiling for 1981 reflects requirements of 5 USC 3394, concerning the fractional counting of part-time permanent positions.

MAR 9 1981

Honorable Roger H. Jones, Jr.
Acting Administrator
Small Business Administration
Washington, D. C. 20416

Dear Mr. Jones:

As you are aware, SBA disaster loan funds are in the process of being committed at a rate which will exhaust the FY 1981 Congressional appropriation before the end of the current fiscal year.

This is to advise you that the President has decided to withdraw the $780 million supplemental appropriation request which had been submitted by the prior Administration for the Disaster Loan Fund.

Pursuant to the President's decision and to the fact that the Disaster Loan Fund is not an entitlement program which compels the grant of loans to a fixed group of persons and businesses, the President has directed that the SBA adopt policies, forthwith, intended to ensure that the Disaster Loan Fund operates within its total budgetary resources of $2.385 million for the entire 1981 fiscal year.

You are, accordingly, directed to submit a plan to me setting forth changes in Disaster Loan Fund discretionary policies and, if need be, regulations that will ensure the operation of the program within the the current FY 1981 appropriation for the balance of the fiscal year. The revised plan should take into account the need to establish new priorities for determining eligibility for loans and/or policies designed to reduce loan awards to eligible parties on an aliquot basis. Such a plan should be submitted no later than March 15, 1981.

The President has directed me to indicate that a central aspect of the plan be that it reserve loan funds for reasonably anticipatable emergencies likely to occur during the remainder of the fiscal year so that the fund is not wholly exhausted when floods, hurricanes, or other such anticipatable disasters occur prior to the end of the fiscal year. To assure that this objective is achieved, this Office has reapportioned the 1981 Disaster Loan Fund to prevent (as required by the Antideficiency Act) the expenditure of resources "in a manner which would indicate a necessity for deficiency or supplemental appropriations." The reapportionment form reflecting this action and the termination of non-physical disaster assistance is enclosed.

As you know, the President's decision was reached with a firm and committed concern that the Nation's well-being can no longer be ensured unless immediate steps are taken to reduce Federal spending and loan activities and to reduce the present rate of inflation. All segments of Government are being required to reduce and eliminate many of their programs, including programs such as the Disaster Loan Fund which have heretofore and will in the future provide an important benefit for persons in need.

If, in your opinion or that of counsel, compliance with the President's directive cannot be achieved by reason of alleged constraints of law, please advise me immediately.

Sincerely,

David A. Stockman
Director

Fiscal year 1981

APPORTIONMENT AND REAPPORTIONMENT SCHEDULE

AGENCY: Small Business Administration

BUREAU: —

APPROPRIATION OR FUND TITLE AND SYMBOL: 73X4153 Disaster Loan Fund

DESCRIPTION	Memorandum: Obligations incurred	AMOUNT ON LATEST S.F. 132	AGENCY REQUEST	ACTION BY OMB
BUDGETARY RESOURCES				
1. Budget authority:				
A. Appropriations realized				
B. Appropriations anticipated (indefinite)				
C. Other new authority (borrowing authority)		700,000,000	700,000,000	a/
D. Net transfers (+ or −)		-3,500,000	-3,500,000	b/
2. Unobligated balance:				
A. Brought forward October 1		869,854,650	869,854,650	
B. Net transfers (+ or −)		-2,000,000	-2,000,000	
3. Reimbursements and other income:				
A. Earned thru December		96,387,102	178,195,674	c/
B. Change in unfilled customers' orders (+ or −)				
C. Anticipated for rest of year		658,412,898	576,604,326	c/
4. Recoveries of prior year obligations:				
A. Actual		10,430,621	13,795,400	
B. Anticipated for rest of year		59,569,379	56,204,600	
5. Portion not available pursuant to P.L. ______ (−)				
6. Restorations (+) and writeoffs (−)		-3,630,000	-3,630,000	d/
7. TOTAL BUDGETARY RESOURCES		2,385,524,650	2,385,524,650	2,385,524,650
APPLICATION OF BUDGETARY RESOURCES				
8. Apportioned:				
Category A:				
(1) First quarter thru Dec.	367,414,374	680,000,000	680,000,000	e/680,000,000f
(2) Second quarter		1,060,000,000	1,080,000,000	e/470,000,000f
(3) Third quarter		250,000,000	205,000,000	e/460,000,000f
(4) Fourth quarter		80,000,000	105,000,000	e/460,000,000f
Category B:				
(1) Interest Expense		263,034,000	263,034,000	263,034,000
(2) Other Expense		14.966,000	14,966,000	14,966,000
(3)				
(4)				
9. Withheld pending rescission				
10. Deferred				
11. Unapportioned balance of revolving fund		37,524,650	37,524,650	37,524,650
12. TOTAL BUDGETARY RESOURCES		2,385,524,650	2,385,524,650	2,385,524,650

SUBMITTED ______ (Authorized officer) 2/10/81 (Date)

APPORTIONED Joyce J. Walker MAR 3 1981 (Date)

Joyce J. Walker
Deputy Associate Director
Transportation, Commerce

a/ Funds provided under continuing resolution (PL 96-536)

b/ Transfer to Salaries and Expense Fund

c/

	(Dollars in Thousands)
Loan repayments	$530,000
Interest Income	220,000
Other Income	4,800
Total Receipts	$754,800

d/ Principal Collections transferred to GNMA

e/ Program Levels requested by Quarters (Dollars in thousands)

Quarter	Physical	Non-Physical	Total
1st	$ 650,000	$30,000	$ 680,000
2nd	1,050,000	30,000	1,080,000
3rd	175,000	30,000	205,000
4th	75,000	30,000	105,000
TOTAL	$1,950,000	$120,000	$2,070,000

f/ Program Levels Approved by OMB

1st	650,000	30,000	680,000
2nd	460,000	10,000	470,000
3rd	460,000	--	460,000
4th	460,000	--	460,000
TOTAL	2,030,000	40,000	2,070,000

DIRECT FUNDS

Senator WEICKER. By memorandum dated March 31, the Acting Associate Administrator for Financial Assistance informed all SBA field offices that applicants for direct development company and energy loans should be notified that "funds will probably never be available." On what basis was this statement made?

Mr. HOLLOWAY. Mr. Chairman, that statement was made on the basis the administration's budget for 1982 provided no further direct funds. That was the basis of it.

Senator WEICKER. Does everybody in the Small Business Administration understand the laws of this Nation are usually derived by cooperation between the executive and the legislative branches?

Mr. HOLLOWAY. Yes, sir, we understand that fully, Mr. Chairman. It is recognized that there could be, toward the latter part of this fiscal year, some changes called for in the President's program and the President's budget which will not be embraced by the Congress.

Senator WEICKER. I must confess, I suppose from your point of view if you are going to adhere to the most conservative fiscal practices, and I am a conservative also, since you have a contingent liability out there in terms of zero funding which has been expressed, I think you have to go ahead and operate on that basis.

Attached to the March 31 memo is suggested wording for letters to development company and energy loan applicants. The language reads in part: "All appropriated direct funds for this program have been obligated." In fact, would it not be more accurate to state that no commitments are being made pending action on the President's request to defer funds?

Mr. HOLLOWAY. Mr. Chairman, it would have been more accurate to have said all funds that have been "apportioned" rather than appropriated.

Senator WEICKER. Can you provide the subcommittee with a complete report on the status of all direct lending programs, indicating the amounts appropriated, the amounts obligated to date, and what funding will be available for the remainder of fiscal year 1981?

Mr. HOLLOWAY. Yes, sir.

Senator WEICKER. Concerning surety bonds, a March 30 memorandum from the Acting Administrator and an April 10 follow-on memo from the Director of the Office of Surety Bond Guarantees limits all new bonds to 125 percent of a contractor's previous bond. Did you evaluate the impact this limitation has had on contractors?

Mr. CARVER. No; it apparently has had some detrimental impact on a contractor who has been growing and moving up to larger contracts.

Senator WEICKER. Congress approved a $1.6 billion surety program for 1981. The new directive is designed to hold guarantees to $1.4 billion, thereby artificially limiting demand. Really, isn't it tantamount to changing the rules in the middle of the game?

Mr. CARVER. No more so than what is required in order to maintain or be consistent with the President's recommendation.

SBDC PROGRAM

Senator Weicker. What amount has been allocated by SBA for the small business development center program in firscal year 1981?

Mr. Carver. $4.8 million, sir.

Senator Weicker. That is $4.7 million below the level appropriated?

Mr. Carver. Yes, sir.

Senator Weicker. By a letter dated February 18, 1981, this subcommittee indicated its disapproval of the proposed reprograming of $4.7 million for SBDC's and directed the agency to fund the program at a $7.5 million level.

The House subcommittee took similar action. By proceeding with the reprograming, hasn't SBA, in fact, ignored congressional direction?

Mr. Carver. Sir, that was President Carter's recommendation. We have resubmitted subsequent to President Reagan's budget, a request to reprogram these funds.

Senator Weicker. They have not been reprogramed, is that correct? Are you saying the initial programing request——

Mr. Carver. Is from the previous administration.

Senator Weicker. Even though we disapproved it in February of this year?

Mr. Carver. Yes, sir. The President then decided to resubmit the request for your additional consideration.

Senator Weicker. The agency proposes the elimination of the small business development center program in fiscal year 1982. Mr. Cardenas, have you reviewed the performance of SBDC's and feel satisfied that the program does not merit continuation?

Mr. Cardenas. I made some preliminary review, Senator, and I need to further review that program. I tend to agree it has not been the most effective program.

Senator Weicker. I tell you, that is not the testimony I received in terms of management assistance. The information the committee has gotten back is very much on the plus side.

Mr. Cardenas. There is not enough practical experience input into that program.

Senator Weicker. That probably is true. Of course, if you eliminate it, you will never get that.

Mr. Cardenas. That is true.

I don't think people who have problems in business and get into business can rely solely on academia.

Senator Weicker. I think my answer to that would be that because of the ineptness and/or politics and/or corruption that was existent in so many of the functions of the Small Business Administration that related to management assistance, they turned to the universities.

Once that act is cleaned up at home base, it may very well be that the reason for turning to the universities no longer exists.

I don't think that is now. I can assure you, I believe that it's going to be a good year or two to get the shop in order. I am just wondering what happens in the interim.

Mr. Cardenas. There is no question we have failed in management assistance. That is certainly one of the primary areas of concentration we will be reviewing.

Senator WEICKER. Let's hope you won't have to go outside the administration at all.

LENDING PROGRAM

Senator WEICKER. For fiscal year 1981, Congress appropriated funds sufficient to provide a $403.5 million direct lending program. The President proposes to defer $99.5 million to fiscal year 1982. This will reduce 1981 lending to a level of $304 million and assist in financing a $260 million loan level in fiscal year 1982.

Now, the Senate Budget Committee has proposed the total elimination of direct loan programs and recommended that we turn the proposed deferral into a rescission. What is the administration's position on this recommendation?

Mr. CARDENAS. We feel there should be some direct funding, or direct funding should be continued at interest rates the same as the guarantee program. In other words, to give everybody an opportunity; otherwise, you really have people out there who will be suffering in the economy who will have no recourse to anyone. Direct funding would be appropriate. The policy on that, the regulation, would be direct loans at interest rates the same as the guarantee program. That also fits with our consolidation proposal, the consolidated lending program.

Senator WEICKER. Our counterpart subcommittee in the House has recommended rejection of the requested deferral. If this action stands, the entire $403.5 million in direct lending must be made available this year. What effect will the House action have on small business loans in fiscal year 1982? In other words, if additional funds for 1982 lending are not requested, how much will be available for direct lending?

Mr. CARVER. In 1982, sir?

Senator WEICKER. Yes.

Mr. CARVER. There would be none, assuming you do not appropriate.

Mrs. Ingram. I think the question, Harry, is with regard to the deferral. If the House action to turn back the deferral stands, how will that affect your direct lending program in 1982?

Mr. CARVER. I am sorry. Basically it would require an additional appropriation in 1982 to support the program, $113 million is the present deferral. Based on the House action or your action, the 1982 request is about $113 million short—if that is the answer to your question.

Mrs. Ingram. If the House action stands, rather than $260 million being available, there would be approximately $160 million available for direct lending in 1982 unless additional funds are appropriated?

Mr. CARVER. Yes.

SBA DISASTER ASSISTANCE

Senator WEICKER. On March 19, the Acting Administrator signed final rules, effective immediately, limiting eligibility for SBA disaster assistance. Did your General Counsel review the legal basis for these regulations? Would you please provide this committee with SBA's own assessment of whether these regulations are consistent with current law.

Mr. CARDENAS. It is my understanding, I think you are alluding to the 60-percent participation coverage, it is merely a matter of spreading the buck. That is what it amounts to.

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received the following information from the Small Business Administration. By direction of the chairman the information has been printed in the record.]

[The information follows:]

LEGALITY OF THE "CREDIT ELSEWHERE" TEST FOR ELIGIBILITY FOR SBA DISASTER LOANS

Section 5(b)(6) of the Small Business Act authorizes the Administrator to make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to the Small Business Act. In addition, section 5(b)(7) of the Small Business Act authorizes the Administrator in relevant part to "* * * take any and all actions * * * determined by him to be necessary or desirable in making * * * loans made under the provisions of this act." This provision is broad and the phrase "necessary or desirable" would authorize these changes made in the regulations, provided that such changes do not violate other provisions of the act or other relevant statutes. Moreover, both sections 7(b)(1) and 7(b)(2) authorize the Administration "to make such loans * * * as the Administration may determine to be necessary and appropriate * * *."

We rely on an opinion issued by the Department of Justice on March 17, 1981 (attached) which stated that SBA does, in fact, have authority to promulgate a regulation precluding assistance to applicants able to obtain credit elsewhere.

COMPARABILITY BETWEEN DISASTER LOAN PROGRAMS

Senator WEICKER. In developing the disaster provisions included in Public Law 96-302, the intent of Congress was to insure comparability between the disaster programs of SBA and the Farmer's Home Administration, thereby insuring equal treatment by all those affected by a disaster.

To achieve this goal, creditworthy borrowers were included in the Farmer's Home Administration program. Your regulations exclude creditworthy businesses from SBA's disaster loan program. How is this regulatory action consistent with Public Law 96–302, and have any lawsuits been filed against SBA which challenge the legality of the disaster regulations?

Mr. HERTZBERG. Mr. Chairman, to our knowledge, no lawsuits have been filed at this time. It is my understanding Public Law 96–302 requires comparability only as to interest rates. The regulations that have been imposed do not affect interest rates.

I am unaware that there is any conflict with Public Law 96–302.

Senator WEICKER. Based on implementation of the new disaster regulations to date, do you feel you will be able to effectively meet the demands for disaster assistance within the funding currently available?

Mr. HERTZBERG. Under the regulations that became effective March 19, yes.

MORATORIUM ON SBIC LICENSING

Senator WEICKER. I understand the SBA has temporarily suspended all licensing of SBIC's and MESBIC's. If this is the case, can you provide this committee with a justification of this action?

Mr. CARDENAS. Senator, in fact the first week that I was in position, I was asked to approve something like 11 SBIC's. Fortunately one of them happened to be in my area so I started to ask, I had nothing against the individuals, but I proceeded to ask about the normal procedure for checking it out, how far the investigation had gone prior to approval.

I just felt insufficient investigation and review were carried out on that particular one and I felt we did not have the proper strings attached so that we could pull back the license if the participants did not cooperate with us. So I felt in general that we did not have adequate control. So I immediately proceeded to put a halt to it.

I am currently in the process of reviewing that. As a matter of fact, this morning I signed a letter to our department head saying that the moratorium would continue. Subject to counsel's opinion, we might have to go to the Federal Register for a 90-day period. However, for those that are currently in process, I asked him to prepare revised procedures and submit them to me again as soon as possible so that I could either approve or disapprove of them.

Senator WEICKER. Will you please furnish the committee with a copy of the directive which suspended licensing?

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received the following information from the Small Business Administration as a followup to a question asked during the SBA hearing. By direction of the chairman the information has been printed in the record.]

[The information follows:]

DIRECTIVES FROM MICHAEL CARDENAS

APRIL 28, 1981.

To: Peter McNeish
From: The Administrator
Subject: Moratorium on SBIC and MESBIC licenses

It is my intention to continue the moratorium on processing of new license applications for SBIC's and MESBIC's. The moratorium also applies to transfers of control of existing SBIC's and MESBIC's.

Should it become necessary (on advice of the General Counsel) to publish information on the moratorium in the Federal Register, the time period should be stated as not more than 90 days. If it is necessary to publish the rationale for the moratorium, the details of the statement to be included in the Federal Register should be worked out with the Deputy Administrator.

I am hereby lifting the moratorium on license applications currently in process. I would like you to obtain comments on each application in process from the appropriate SBA District Director, as discussed with Mr. Templeman, and submit the application for my review and approval prior to issuing a license.

MICHAEL CARDENAS,
Administrator.

APRIL 17, 1981.

To: Peter McNeish, Acting AA/Investment
Subject: Issuance of licenses for new SBIC's and MESBIC's

Until further notice, I am hereby placing a moritorium on issuance of licenses for new SBIC's and MESBIC's.

Pleae take appropriate action to notify affected applicants and to coordinate with the General Counsel's office regarding any legal requirements or problems we might encounter in imposing this moritorium.

MICHAEL CARDENAS,
Administrator.

MORATORIUM ON LICENSING

Senator WEICKER. How long do you propose the moratorium on licensing is going to continue?

Mr. CARDENAS. Not more than 90 days, just to give us time to analyze it. To have approved those licenses that were given to me that first week would have been like approving a $5 million expenditure with really no control over it.

STAFFING FOR IG

Senator WEICKER. For fiscal year 1981, the Congress appropriated sufficient funds to increase staffing for the Office of the Inspector General by 10. However, funding for these positions was reprogramed, with congressional approval, to meet costs associated with Federal pay increases.

In light of recent abuses uncovered by the Inspector General and the Senate Small Business Committee, do you feel that the 1982 request for Inspector General is sufficient?

Mr. CARDENAS. I can say very emphatically I do not believe it is sufficient. I wrote a letter to OMB recently, addressed to David Stockman, requesting, I believe, a minimum of 23. The more I think about it, I think the Inspector Generals Office is understaffed by at least 40. That is one area I am really going to go to bat for because I really believe his staff works under the most adverse circumstances throughout the field. I am attempting to make their office situation a little more workable at central office, but I really feel he should have—gosh, he needs 40, 50 more people.

Senator WEICKER. I agree with you.

The usefulness of these hearings is to allocate resources as needs arise. I think both you and I, in the short tenure I have had as chairman of the committee, and you as the Administrator, realize that oversight needs to take place along with the resultant housekeeping that has to take place.

An allocation of resources to the Inspector General's Office is key to everything else that follows. If it means that for a couple of years the personnel level is going to be high there and then it is going to tail off, fine.

I don't think any other area of the Small Business Administration is more important, and I think both you and I are of the same mind with what needs to be done at the outset.

Believe me, I will go to bat for you on this count; for whatever you feel is necessary for him to do the job. Otherwise, the rest of the money is just wasted money. We heard about enough money wasted yesterday to go ahead and give that man the staff that he needs for a year. And had he had the staff to do the job, this wouldn't have happened.

Mr. CARDENAS. He and I discussed the contracts that are happening, and I think he had a contract which he could reinitiate, $200,000, which I felt he would be better off using that money to hire full-time auditors, or whatever staff he needed, rather than going to a consulting contractor.

I can't agree more that we need to have this staff beefed up to really be of help to us. Of course, our internal financial people need help. I have to develop good data base for information which we are short on. That may be another area that will take top priority also in personnel.

I realize we are short in many different areas and we are going to have to cut back. I will just have to set priorities. I can't think of two areas that are of more top priority right now than the Inspector General and the accounting department.

LOANS TO PRIORITY GROUPS

Senator WEICKER. The administration requests $260 million for direct lending programs. According to administration policy, these funds will be targeted to priority groups and markets. However, in your recent justification, there is a $50 million line item—within the total—entitled "Contingent Fund".

The justification states "A contingent fund will be used to supplement any shortfalls in meeting total lending goals" to the priority groups.

If the administration plans to spend $260 million in direct loans to priority groups, why not allocate all funds to these groups? Why have a contingent fund at all?

Mr. CARVER. I think the policy concept is to try to encourage greater participation by the banks, in effect, to shore up their participation in these areas, the disadvantaged, women, those particular areas in which the banks have been less than enthusiastic about participating. We'd use this money as a carrot to encourage our field people to elicit from the banks more participation rather than directly putting the money on the street. It would be a little incentive for the field people.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have other questions which I am going to submit for response to the record. I realize that you just came aboard. If there are any suggestions that you have, I am not so sure this budget wasn't put together before you came to work.

Mr. CARDENAS. It was.

Senator WEICKER. With that in mind, if there are any reworkings you care to engage in, I wish you would let the committee know. We want to accommodate you. I think you should have as free a hand as possible to go ahead and make a success of this agency.

As far as we can do from our end to facilitate that as far as restructuring of priorities, reallocation of moneys, you be in touch with the committee.

Thank you very much.

If any other members of the committee have questions to submit, they will be submitted. I have some question from Senator Hollings which will be submitted for the record.

Thank you.

[The following questions were not asked at the hearing but were submitted to the Agency for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WEICKER

$50 MILLION CONTINGENT FUND

What event or occurance will trigger a decision to spend from the "contingent fund" on priority groups and markets?

Is it your intent to use these funds if banks ignore the priority groups and markets.

ANSWER:

A Contingent Fund of $50 million direct loan dollars has been requested in SBA's FY 1982 budget request to the Congress. The purpose of this fund is to assure that disadvantaged, women and priority market businesses receive an appropriate share of SBA's business loan dollars. Historically, the participation of these businesses in SBA's loan guaranty program has fluctuated due to economic conditions and other factors which affect lending to businesses perceived as "marginal risks" by the banking community.

The use of this contingent fund would be linked with the implementation of SBA's operating plan. The Regional Operating Plan (ROP) will contain goals for the percentage of guaranteed lending made to disadvantaged and to women owned and priority market businesses. If actual loan guaranty results fall short of the ROP goals, then the Contingent Fund would supplement the amount of guaranteed lending. Should actual loan guaranty results exceed the ROP goals, this contingent fund of direct dollars would not be used in that fiscal year.

EVALUATION STUDIES

The 1982 request contemplates an increase of $560,000 for evaluation studies. This is a 79 percent increase over the $710,000 which was available in fiscal year 1981. Can you tell me the reason for this increase and what specific uses are planned for these funds? (Justification page S&E 14, and S&E 87).

ANSWER:

The increase for evaluation studies arose due to the growing need to study industry analysis and size standards issues-competitive structure, and to determine those industries with the greatest potential for small business growth. In addition, there are necessities for actual studies and other assessments of the various SBA lending programs, including traditional as well as priority market programs.

INTEREST RATE PROPOSAL

Under the consolidation proposal all direct loans would be made at a market rate of interest. It seems to me that a move like this could be devastating to many of the small companies that receive SBA loans. It would seem that a lot of otherwise qualified small businesses simply would not be able to afford the higher payments. What analysis has been performed to determine the impact of market rates on the segment of small businesses served by SBA?

ANSWER:

Recently, the spread between SBA's direct and guaranteed lending interest rates has been much greater than the historical spread, and this situation has lead to the question you have asked here. SBA's response is that there are millions of small businesses that could become more financially secure by obtaining a 9 1/4% loan when the market rate is 20%. But, SBA could never have the direct loan resources to satisfy this demand. Also, SBA's current direct loan interest rate attracts "bargain hunters" as it is set at a rate that is normally below the market interest rate. By increasing the direct loan rate to one comparable to guarantees, we will in effect eliminate this large segment of small businesses seeking direct loan assistance at a bargain rate.

Handicapped loans would go from three percent to about 17 1/2 percent under this proposal. Have any specific analyses been conducted to determine the impact on this specific group of small businesses?

ANSWER:

SBA's position on this issue is the same as that for the preceeding question.

ADVOCACY

On January 1, 1981 the Regulatory Flexibility Act (P.L. 96-354) became effective. This new law significantly increases the responsibilities of the Office of Advocacy. What actions has the Office of Advocacy taken to comply with its statutory requirements under this law? Will the Office of Advocacy require additional resources, in terms of personnel or money, to adequately carry out these responsibilities? (If yes, does the Agency's 1982 budget request allow for these additional resources?)

ANSWER:

The Office of Advocacy was already involved in regulatory reform in a significant way prior to the passage of P.L. 96-354. The Office instituted a program of "Regulatory Monitoring" in 1979. Each day, members of the Advocacy professional staff monitored the Federal Register publications of agencies assigned to them according to expertise. The staff made preliminary assessments of potential impact upon small business and made a series of recommendations for Advocacy action depending on the degree of impact upon small business. The actions ranged from written comments to mailing alerts to the sector of the small business community affected, to formal intervention. In addition to this program, the Office was heavily involved in paperwork reduction and implementation of a presidential memorandum which was an immediate predecessor of P.L. 96-354.

Since implementation, the Office has taken a number of steps to fulfill its obligation under P.L. 96-354. These efforts can be roughly divided into two sections education and monitoring. The Office identified four groups which had to be educated. They were Advocacy personnel, agencies, the small business community and the public at large.

The Office developed and published a short booklet which explains The Regulatory Flexibility Act. It is entitiled "Better Federal Treatment for Small Entities." The Office did a mailing to inform the small business community of the existence of the Act. This mailing went to thousands of small business owners and trade associations which are on Advocacy's extensive mailing list.

The Chief Counsel has held several meetings to brief trade associations with significant small business membership. These meetings were held in Washington, Boston, New York, Chicago and Los Angeles.

To reach the legal community, the Chief Counsel authored an article on the law which was published in January, 1981 issue of the American Bar Association Journal.

At the Second National Conference for Senior State Officials and State Legislators in December, 1981, the Office arranged for two major speakers to make a presentation on regulatory flexibility to over 300 assembled state leaders.

The Office has held a series of seminars to educate Advocacy personnel on RFA. Paul Verkeil, Dean of the Tulane Law School, a nationally known scholar and expert on the Administrative Procedure Act, lead these seminars.

The Office has written the heads of all agencies informing them of the passage of P.L. 96-354 and the responsibilities which the law imposes upon each agency head. The Office has also held many informal meetings with agencies to explain the law.

The Chief Counsel has also established a Regulatory Flexibility Task Force, an action which encompasses both Advocacy's monitoring and educational functions. The task force which consists primarily of lawyers but also includes other professionals, numbers two hundred members. We have tried to enlist experts to help us with every agency. The functions of the task force members will be two fold: one, to spread the word about RFA and two, to lend us their expertise in identifying onerous regulations and critiquing the activities undertaken by each agency in response to RFA.

To fulfill our monitoring obligation we have constructed a system based on our own "regulatory monitoring" system which I described above. Each Advocacy professional is assigned an agency or agencies based on their expertise. It is their responsibility to monitor the Regulatory Flexibility activities of the agency assigned. We have developed a check list of activities an agency may undertake which the Advocacy professional uses to track progress. We have developed a manual to provide each staff person with step by step guidance. This manual is currently being revised to reflect the experience of the first three months.

We have established a regulatory flexibility control office (RFCO) under the direct supervision of the Chief Counsel. Whenever a proposed rule appears in the Federal Register or when we receive documents from an agency, they are logged in, assigned a number, given a file and then sent to the appropriate professional. Using the checklist, the professional monitors the agency's progress until a rule becomes final, is certified or otherwise is ready to be closed. It is then returned to RFCO for closing. If intermediate action is required, such if we believe there are problems with an initial regulatory flexibility analysis, the professional through the division director makes recommendations to the Chief Counsel for action, in much the same way as we did under regulator monitoring. We have recently initiated steps to automate our internal system. We expect to have this established within six weeks. This will give us the capacity to report on how agencies are doing as well as provide statistical data on regulatory flexibility.

To establish a closer link with agencies, we asked each agency to name a Regulatory Flexibility Officer who works directly with our staff person on regulatory flexibility questions.

We have a policy review group consisting of Advocacy senior staff to monitor our internal system and to recommend to the Chief Counsel any policy decisions that are necessary under regulatory flexibility.

In January, there were some 400 proposed rules which potentially were subject to regulatory flexibility requirements. In February, there were roughly 200 such rules. The pace appears to be leveling off at about 40 per week.

In January, we noticed that most agencies took no note of RFA. We spent a great deal of time writing and calling agencies reminding them of the law. In February and March, we have noted a considerable improvement in agencies' compliance which I believe is a direct result of our education efforts.

It appears that the overwhelming number of rules will not be subject to the complete Reg. Flex. processes. Perhaps as many as 90% are being certified as not significantly affecting small business or as being a rule specifically excepted by the law. At this time, it is too early to tell how many rules, or what the ultimate out come will be for those rules, which must run through all the requirements of RFA.

Finally, Advocacy has been working with OMB's Regulatory Policy Office to coordinate OMB's and Advocacy monitoring responsibilities under various laws.

In sum, I believe we can report that we do have an effective monitoring system in place and we have undertaken extensive educational activities. A substantive evaluation of issues and agency performance will appropriately be addressed in the Annual Report by Advocacy on the operations of the Act.

The operation is a strain on Advocacy resources. If more proposed rules are issued which will be subject to the entire RFA process, we will have to conduct better and more thorough reviews of agencies' analyses and possibly step up the level of intervention in the rulemaking process. We fully support the President's recommendations on the budget and hiring, but certainly if resources were made available, additional personnel could be put to good use in the Regulatory Flexibility process.

Q. What progress has the Office of Advocacy made in its preparation of an accurate small business economic data base? Does the Office of Advocacy make its small business economic data available to other Divisions within the Agency, particularly the Size Standards Division?

A. The goal of the small business data base development effort is to define and build a micro data base for analysis of the impact of public policy on the small business sector of the U.S. economy. This involves defining the small business population in relation to aggregate measures of business, (such as GNP), merging available micro data to enrich the data, developing a representative business sample, and designing methodologies to create longitudinal data in order to evaluate changes in business conditions.

The data files we have available are based primarily on the Dun and Bradstreet Market Identifier DMI file and the Financial Statement file. The DMI contains information on over 4.3 million establishments including name and address of firm, geographic and industry codes, employment for virtually all establishments, sales information for about 85 percent of the firms, age of the firms, and organizational status of the establishment. For about 25 percent of the firms, data are available for employment and sales for a five year period.

Data from the Financial Statement files contain an average of three years of detailed financial data for approximately 900,000 firms. This file contains key balance sheet and income statement variables, and up to five years of historical data on sales, profits and net worth. Work which involves cleaning, checking and validating the data still remains to be done to make this file a reliable research tool for small business.

During the past few weeks a major aspect of the "cleaning" of this data for research purposes has been completed, when the data on multi-establishment firms was reconciled with the establishment data.

The type of output from this system is illustrated in Figure 1.

We have developed significant capabilities to use these files. It is possible to select samples or mailing lists based on 14 criteria, or a combination thereof, including State, county, and zip code, employment level, industry classification, age of firms and organizational status.

Records are organized geographically by State so inquiries can be made directly to the tape containing the desired data. Ready to use mailing labels are printed directly by computer. Turnaround time from request to finished labels is one or two days at most. Computer programming has been simplified, and costs are minimized by doing the processing overnight on a leased machine on an as needed basis. This user oriented system provides high quality, inexpensive, and timely service.

To expand this file to include as many business firms as possible, we are purchasing an additional mailing list containing about 7 million firms, and are merging the two files, after removing duplicates. The software to carry out this merging operation has been developed.

In summary, the data base development effort has followed the outline presented in P.L. 96-302, as described in Figure 2. The shaded items indicate the subjects that are now covered or will be covered by the end of 1982. Additional data development efforts will be necessary to complete the remaining items because current resources are not adequate to proceed. The current expenditures for fiscal 1981 are approximately $1,000,000 for the mailing list activities, and $1,000,000 for the external data base. This projection assumes that the 1982 budget for the mailing list will be reduced slightly because only maintenance is required, but that the level of funding for the data base remains the same.

Other completed data developments projects are important to note. A longitudinal file for sole proprietors has been established using Social Security Administration data, and a data base cooperatively produced with the Labor Department now provides current employment and unemployment by size of firm. SBA has utilized the data base developed by Dr. David Birch, MIT, to obtain tabulations by establishment and firm size for key business variables, and a project to estimate Gross National Product (GNP) by industry and size of business for the 1955-76 period has been completed.

We have shared the output of these data files as they have come on-line with other divisions within the agency including the Size Standards Division and those involved in the Procurement Automated Source System (PASS).

FIGURE 1
SIC 2841
EMPLOYMENT AND SALES OF ESTABLISHMENTS
PRELIMINARY SBA U.S. BUSINESS DATA BASE***
JANUARY 1981

Employment Size of Firms and Establishments*

	1-4	5-9	10-19	20-49	50-99	100-249	250-459	500-999	1,000-2,499	2,500-4,999	5,000-9,999	10,000 & OVER	TOTAL
Number of Establishments													
By Firm Size	213	135	85	84	45	25	13	6	10	4	22	58	700
By Estab Size	249	140	103	112	43	24	11	11	6	0	0	1	700
Average Sales ($000)**													
By Firm Size	113	339	918	1693	4005	8265	5197	11140	7425	0	127402	1753418	46719
By Estab Size	155	583	15548	3335	4286	12686	16500	398000	4260000	0	0	0	46719
Share of Total Sales(%)													
By Firm Size	0.1	0.3	0.5	0.8	1.0	1.0	0.3	0.2	0.2	0.0	3.4	92.3	100.0
By Estab Size	0.1	0.2	4.9	1.1	0.6	0.9	0.6	13.4	78.2	0.0	0.0	0.0	100.0
Cumulative Share of Sales(%)													
By Firm Size	0.1	0.4	0.9	1.7	2.7	3.7	3.9	4.2	4.3	4.3	7.7	100.0	100.0
By Estab Size	0.1	0.4	5.3	6.4	7.0	7.9	8.5	21.8	100.0	100.0	100.0	100.0	100.0
Average Employment													
By Firm Size	2	5	12	24	42	59	50	77	32	29	129	545	62
By Estab Size	2	6	13	30	61	148	347	639	1258	0	0	13000	62
Share of Total Employ(%)													
By Firm Size	1.2	1.8	2.3	4.7	4.4	3.4	1.5	1.1	0.7	0.3	6.5	72.1	100.0
By Estab Size	1.4	2.0	3.1	7.7	6.1	8.1	8.7	16.0	17.2	0.0	0.0	29.6	100.0
Cumulative Share of Employ(%)													
By Firm Size	1.2	3.0	5.4	10.1	14.4	17.8	19.3	20.4	21.1	21.4	27.9	100.0	100.0
By Estab Size	1.4	3.5	6.6	14.2	20.3	28.4	37.1	53.2	70.4	70.4	70.4	100.0	100.0

TOTAL EMPLOYMENT OF ESTABLISHMENTS IN SIC 2841: 43874

*For businesses with a single location only, firm size is the same as establishment size. For businesses with more than one establishment, firm size is determined by the total employment of the firm, consolidating the employment of all the establishments (e.g., branches or subsidiaries) within the business family. Zero-employment firms were not included.

**Averages were calculated exclusive of firms with unreported sales. Zero average sales implies that no sales data were available.

***These tables were prepared by The Brookings Institution using Version 2 of the SBA Interim U.S. Business Data Base.

FIGURE 2

INFORMATION AVAILABLE FROM SBA INTERIM MICRO DATA BASE

EMPLOYMENT, LAYOFFS AND NEW HIRES

NUMBER OF BUSINESS ESTABLISHMENTS AND TYPE, PROPRIETORSHIP, PARTNERSHIP OR CORPORATION

NUMBER OF BUSINESS FORMATIONS AND FAILURES

SALES AND NEW ORDERS

BACK ORDERS

INVESTMENT IN PLANT AND EQUIPMENT

CHANGES IN INVENTORY AND INVENTORY TURNOVER

CAPITAL INVESTMENT INCLUDING DEBT, EQUITY AND RETAINED EARNINGS

DEBT TO EQUITY RATIOS

EXPORTS

NATURE OF MERGERS AND ACQUISITIONS

CONCENTRATION RATIOS

* POLICY ANALYSIS

How many contract awards, representing what dollar amount, did the Office of Economic Research of the Chief Counsel for Advocacy make during FY 1980? What is the purpose of such awards?

ANSWER:

The Office of Economic Research of the Chief Counsel for Advocacy made 71 awards totaling 3.8 million dollars in FY 1980. The purpose of these awards was to meet the statutory mandate of Public Law 94-305 and Public Law 96-302. There were 16 awards or Interagency Agreements totaling 1.1 million dollars for projects related to the development of a small business economic data base and mailing list. Awards totaling 2.7 million dollars for applied policy research and for joint sponsorship of research related to the effects of particular Federal regulatory policies. In FY 1981, emphasis in the research program shifted from applied policy research to data base development. FY 1981 plans call for 2 million dollars in expenditures for data base development, including 1 million dollars for work on the indicative data base and 1 million dollars for work on an external small business economic data base. The external data base is defined in Public Law 96-302. In addition, we contemplate applied policy awards totaling approximately eight hundred and fifty thousand dollars for FY 1981. Fiscal year 1982 expenditures are expected to be approximately the same as FY 81 expenditures, both in amount and in emphasis.

WOMEN'S BUSINESS ENTERPRISE

What is your plan for the Women's Business Enterprise Program? Will you retain a separate Office of Women's Business Enterprise managed by an Associate Administrator?

ANSWER:

SBA has not completed the process of selecting its top management officials as of yet. After this process is complete, organizational questions, such as the one you pose here, can be addressed. At this time, no such organizational change has been proposed.

How do you plan to insure that mainstreamed programs will be responsive to the needs of women entrepreneurs?

ANSWER:

SBA is committed to provide programs that are responsive to the needs of women, as well as all other clients served by the SBA. The Agency will use its planning and control systems, as well as the MAC personnel system to reinforce this committment.

INTERNATIONAL TRADE

Through both prior Appropriations bills and enactment of P.L. 96-481, the Congress has mandated increased activity by SBA in promoting small business exports.

What has the Administration requested for the Office of International Trade in FY 1982?

ANSWER:

The FY 1982 request for the Office of International Trade is estimated at approximately $1.46 million.

How many people at SBA are involved solely in performing export promotion activities?

ANSWER:

Their are 4 full-time permanent positions in the Central Office. In the field, each of the 10 regional offices has a Regional International Trade Specialist of which six are solely involved in export promotion. The remaining personnel carry out assignments in addition to those associated with their export promotion responsibilities. Also, there is one person in each of the 65 SBA district offices with collateral international trade responsibilities, and who is readily available to handle a client's export-related problem or put the client in contact with proper sources of assistance. These individuals, however, are also concerned with building a small business firm's domestic strength to assure their competitiveness in foreign markets.

In addition, the Service Corps of Retired Executives (SCORE) and the Active Corps of Executives (ACE) provide in-depth export counseling to small businesses. There are over 650 volunteers with an extensive background in international trade, of which 300 actively seek out small business potential export clients. SCORE has established a national network of volunteers whose sole responsibility is export promotion.

Through SCORE, SBA can achieve increased operating efficiency and at the same time improve public benefit by properly utilizing the international trade expertise of these volunteers to provide the necessary in-depth counseling to meet the needs of small business exporters.

Has SBA, in cooperation with other agencies established two one-stop export promotion centers as required by P.L. 96-481?

ANSWER:

Implementation of the two pilot one-stop export promotion centers falls under the jurisdiction of the Secretary of Commerce. As such, SBA is working closely with the U.S. Department of Commerce and other agencies concerned to comply to the maximum extent possible with the Secretary's request for SBA participation and with the intent of the Law.

At the request of the Secretary, joint SBA/Commerce visits have been made to Columbia, S.C. and Milwaukee, WI to investigate the feasibility of possibly establishing such centers in those cities.

Please provide the Committee with a listing of all export loans approved to date and progress to date in implementing the loan provisions included in P.L. 96-481.

ANSWER:

As of March 31, 1981 we have approved 5 export loans for $576.5 thousand. During FY 1980, 14 loans were approved for $2,652.3 thousand.

What other steps has the Agency taken to substantially upgrade its export promotion activities?

ANSWER:

- Export training programs for SBA Regional International Trade Specialists and other selected SBA and SCORE personnel were conducted in major export cities to acquaint them more fully with the export marketing and financing process. Video tapes covering the training material have been developed and are being used to train SBA and SCORE personnel located in cities not extensively involved in exporting. A more specialized training program tailored to the Regional International Trade Specialists' responsibilities was held in January 1981.

The involvement of SBA programs in international trade counseling of small business exporters is being increased.

Information and resource materials on exporting and export-oriented organizations continue to be provided to SBA field office personnel.

Publications related to small business exporters are being developed.

The Agency is working with the U.S. Department of Commerce to tie in SBA's data collection and communication systems with Commerce's Worldwide Information and Trade System.

Additional SCORE and ACE volunteers with a background in international trade are being recruited to counsel small business exporters.

The Agency has developed rules and regulations concerning the Export Revolving Line of Credit for small business exporters. We intend to publish them for public comment in the Federal Register after which we will review the material received and publish the program's final rules and regulations.

We are identifying loan officers in each of the Agency's district offices to be responsible for processing export loan applications. This will better enable the Agency to monitor the number and dollar value of export related loans made to small businesses.

We are also looking into the possibility of establishing professional export counseling assistance through the use of professional consultants.

POSITION REDUCTIONS

The revised budget calls for a reduction of 440 positions (from 4,658 in January to 4,218) in the agency's end-of-year ceiling for fiscal year 1982.

What portion of this reduction will occur in 1981 and what specific program areas will be affected by the position reduction? (January justification page, S&E 10; Revised justification page, S&E 5).

ANSWER:

The reduction of 440 positions are as follows:

	FY 1981	FY 1982	TOTAL
Direct Lending (FA)	15	15	30
Guaranteed Lending (FA)	50	50	100
7(j) Call Contracts (MSB)	12	--	12
Business Development (MSB)	28	--	28
Small Business Development Centers (MA)	--	24	24
Women's Business Enterprise (WBE)	3	3	6
Total Program Reductions	108	92	200
Other Reductions (Support)	167	73	240
Total Reductions	275	165	440

GUARANTEED LENDING

A March 25th memo from the Acting Associate Administrator for Financial Assistance implemented new restrictions on guaranteed lending. Again, this seems to change the rules in the middle of the game. Don't most participating banks rely on a certain level of SBA guarantees in each quarter of the year?

ANSWER:

Our participating banks provide other services to their customers and are in no way dependent upon SBA participations for their existence.

Do you believe that imposing restrictions on guaranteed lending will cause many banks to drop out of the picture entirely?

ANSWER:

The banks are well aware of and generally support President Reagan's economic/budgeting policies and have indicated that they will cooperate in helping the Agency cut back its lending to comply with the proposed cut back in the Agency guaranty lending authority. We doubt very seriously that many banks will drop out of the picture entirely.

Reductions in guarantee levels, whether for Surety Bonds or regular business loans does not have a significant budgetary impact. Can you explain, thus, the rationale for this reduction?

ANSWER:

In the guaranteed lending programs the budgetary impact is predicated on the loans that are repurchased from the participating banks. It is currently estimated that about 18% of guaranteed loans will be repurchased within a six year period. Therefore, the budgetary impact may not be significant within the first year but is significant over the six year period. The rationale for this reduction assumes that the private sector could absorb substantial portions of SBA financial assistance to small business. This reduction is part of a comprehensive plan to restructure SBA credit assistance activities, with the ultimate objective of reducing the Government's level of intervention.

DISASTER LENDING

Based on implementation of the new disaster regulations to date, do you feel you will be able to effectively meet the demands for disaster assistance within the funding currently available?

ANSWER:

SBA's original study, and subsequent information, indicate that, operating under the regulations effective 3/19/81, and barring any additional major disaster, it can effectively carry out the program through the balance of the fiscal year within its existing appropriation.

Do the new regulations apply to disasters occurring between July 2, 1980 and March 19, 1981?

ANSWER:

Yes. The new regulations do apply to disasters occurring between July 2, 1980 and March 19, 1981.

LOCAL DEVELOPMENT COMPANIES

Your revised fiscal year 1982 budget submission states that no policy change is proposed in SBA's direct lending practices. Yet, in the table that you provide at S&E-2 of your budget submission, you have not requested any direct loan funds for the local development company programs. Are development company loans included under what you have listed as "priority markets"?

If so, how much of the $18 million requested for "priority markets" would go to the development company programs? (If not, why haven't you requested any direct loan funds for the development company programs?)

ANSWER:

SBA's revised FY 1982 budget request, as well as the original request, did not include any direct funds for development company loans. SBA is convinced that the 502 and 503 guaranty programs will adequately serve the needs formerly satisfied by the direct local development company program.

NOTE: The policy direction of the previous Administration was to de-emphasize the use of direct loans for development companies. They argued that with the new 503 authority (i.e., SBA guaranteed debentures to finance the same kinds of projects) there would not be any need for direct loan funds.

Has SBA curtailed, in any way, the processing of certifications for the 503 program? If so, please explain the reason for such actions and your plans for the future? Please provide for the record a current list of certified 503 companies.

ANSWER:

With the de-emphasis on direct funds for the Development Company Program greater reliance has been put on the 503 guaranteed authority by the local development companies. Most of the active LDC's under the 502 program have applied for and received certification under the 503 program.

As part of his economic package the President has proposed cuts in Government lending programs. These cuts will effect all of the SBA lending programs, including the 503 program. Until such time as we should proceed, all licensing and certification of new lenders are being held in abeyance. If events in the future dictate a continued reduction in funding for the 503 program, there are several actions which we could take to slow down the level of activity. These could include the requirement of a higher percent of financing from non-federal sources and a requirement that the project result in a minimum number of newly created jobs. Attachment III is a current list of certified 503 companies.

ATTACHMENT III

CERTIFIED DEVELOPMENT COMPANIES

(as of April 30, 1981)

NAME	DATE APPROVED	CERTIFICATE NUMBER	
James D. Griffin President The Local Development Corporation for the City of Buffalo 920 City Hall Buffalo, New York 14202 (716) 856-420	10/1/80	02-001	C
Michael C. O'Laughlin President Niagra Falls Local Development Corporation 745 Main Street Niagara Falls, New York 14302 (716) 278-8200	10/1/80	02-002	F
Clifford B. Marsh President Erie Niagara Industrial Development Corporation 107 Delaware Avenue Buffalo, New York 14202 (716) 877-4320 or (716) 849-6677	10/1/80	02-003	C
Steven D. Gurian President Long Island Development Corporation 1501 Franklin Avenue, Suite 209 Mineola, New York 11501 (516) 535-5454	10-27-80	02-004	F
Edward G. Bruske President Kansas City Corpration for Industrial Development (KCCID) 1102 Grand Avenue, Suite 310 Kansas City, Missouri 64106 (816) 474-3560	12-18-80	07-006	F
Michael H. Finn President Forward Development Corporation 1101 Beach Street, Rm 223 Flint, Michigan 48502 (313) 766-8865	10/5/80	05-007	F

Gerald Toner **President** **Louisville Economic Development Corporation** **Fourth Floor, Natural History Museum** **Louisville, Kentucky 40202** **(502) 587-3051**	02/06/81	04-008	F
James Saunders President San Antonio Local Development Company, Inc. P. O. Box 9365 San Antonio, Texas 78204 (504) 525-1321	01/06/81	06-010	F
Howard Barkhoff President Seattle King County Community Development Association 2111 Smith Tower 2nd & Yesler (205) 625-4530 or (205) 784-9533	01/06/81	10-011	F
Joseph J. James President Urban Local Development Corporation 100 South Broad Street, Suite 2032 Philadelphia, Pennsylvania 19110 (215) 561-6600	12/30/80	03-012	F
Ben C. Hill, Jr. President Tucson Local Development Corporation C/O Kendall Bert P.O. Box 27210 Tucson, Arizona 85726. (602) 791-40505	12/30/80	09-013	F
Bernard L. Berkowitz **President** **Bedco Development Corporation** **Suite 2400, Charles Center South** **36 South Charles Center South** **Baltimore, Maryland 21201**	01/12/81	03-014	F
Aubrey G. LeBard, III **President** **La Habra Local Development Company, Inc.** **Civic Center P.O. Box 337** **La Habra, California 90631** **(213) 691-0553**	01/16/81	09-015	F

Bradford S. Crowe President Los Angeles LDC, Inc. C/O City Economic Development Office City Hall, Rm 2008 200 North Spring Street Los Angeles, California 90012 (213) 624-6753	01/06/80	09-016	F
Brooke H. Duncan President New Orleans Citywide Development Corporation 301 Camp Street Suite 216 New Orleans, Louisiana 70130 (504) 525-1321	10-31-80	06-017	F
Elliott Golinkoff President Willmington Local Development Corporation Two East Seventh Street, Suite 306 Wilmington, Delaware 19801 (302) 571-4112	01-16-81	03-018	F
Henry A. Violet President Ocean State Business Development Authority 42 Park Place Pawtucket, Rhode Island 02860 (401) 722-5800	01-12-81	01-019	F
Robert J. A. Renard The St. Louis Local Development Company 1300 Delmar Boulevrd Third Flr. St. Louis, Missouri 63105 (314) 231-3500	01-16-81	07-020	F
Norbert Wapelhorst Crossroads Economic Development Corporation of St. Charles County, Inc. 207 N. 5th Street P.O. Box 1454 St. Charles, Missouri 63301 (314) 946-4377	01-16-81	07-021	F
James A. Barresi President Northern Maine Regional Planning Commission 2 Main Street, P.O. Box 779 Caribou, Maine 04736 (207) 498-8736	01/09/81	01-023	F

Clarence M. Pendleton, Jr. President San Diego County Local Development Corporation 4262 Market San Diego, California 92102 (714) 263-6123	12/29/80	09-024	F
Virginia Spears President Los Medanos Fund, A Local Development Company P. O. Box 1397 501 Railroad Avenue Pittsburg, California 94565 (415) 439-1056	1-06-81	09-026	F
Rosa C. Moore President South Shore Area Development Company 7054 S. Jeffery Blvd. Chicago, Illinois 60649 (312) 288-1000	10-05-80	05-029	F
Jonathan Phelps President Avenue Area Incorporated 503 Security National Bank Bldg One Security Plaza Kansas City, Kansas 66101 (913) 281-0222	01-16-81	07-030	F
Gene S. Brent President Old Colorado City Development Company 2504 West Colorado Avenue Colorado Springs, Colorado 80904 (303) 634-5105	01-26-81	08-031	F
George Armstrong President Rosedale Local Development Corporation 3500 Rainbow Blvd Kansas City, Kansas 66103 (913) 321-6382	01-08-81	07-032	F
Richard Reifler President Lawrence Avenue Development Corporation 3446 W. Lawrence Avenue Chicago, Illinois 60625 (312) 463-5420	01-12-81	05-033	F

Chester C. Benjamin President Pawtucket Local Community & Inc Development 200 Main Street Pawtucket, Rhode Island 02860 (401) 722-2150	01-16-81	01-034	F
Howard Morrison President Manitous Springs Development Corporation P. O. Box 72 Maintous Spring, Colorado 80829 (303) 472-6385	01-06-81	08-035	F
Dean Macris President San Francisco Industrial Development Fund 552 McAllister Street San Francisco, California 94115 (415) 558-5626	01-16-81	09-036	F
Mr. William E. Kelley President South Shore Economic Development 36 Miller Stile Road Quincy, Massachusett 02169 (617) 479-1111	01-12-81	01-037	C
James L. Kirkpatrick President Grand Rapids Local Development Corporation 17 Fountain Street, N.W. Grand Rapid, Michigan 49503 (616) 454-9273	01-12-81	05-038	C
Lombard Gasbarro President Providence Local Development Corporation 77 Washington Street Providence, Rhode Island 02903 (401) 274-5200	01-06-81	01-039	F
William R. Dominquez President Old Aurora Development Company 1465 Boston Street Aurora, Colorado 80010 (303) 364-4360	10-05-80	08-040	F

Gayle Pendelton Jackson **President** **St. Louis County Local Development Company** **555 South Brentwood Blvd.** **St. Louis (Clayton), Missouri** **(314) 899-2167**	01-16-81	07-042	F
Frank Bronstein President Boston Local Development Corporation 18 Tremont Street, Suite 300 Boston, Massachusetts 02108 (617) 749-6900	01-26-81	01-043	F
Thomas Daniel O'Reilly President Greater Southwest Local Development Corporation 6249 Southwestern Avenue Chicago, Illinois 60636	01-16-81	05-045	F
Dr. Frank Fulla President Somerville Local Development Corp City Hall - 93 Highland Avenue Somerville, Massachusetts 02143 (617) 625-6600 Ext. 138	01-26-81	01-051	F
Arthur J. Clement, Jr. President Charleston Citywide Local Development Company 116 Meeting Street Charleston, South Carolina 29401 (803) 577-6970	02-20-81	04-028	F

F - Final certification
C - Conditional certification

I have received letters, and my staff has had briefings with representatives of state development companies who are concerned about the regulations which preclude them from participating in the 503 program without establishing a spin-off development company. I am told that the state development companies are very professional organizations, generally with outstanding backgrounds and records of success in repaying SBA loans. Yet, those companies have been precluded from the 503 program by Agency regulations if they also use other SBA funds for financing businesses.

Have you evaluated this policy? Please advise me of your position on this matter.

ANSWER:

This regulation was implemented to prevent State Development Companies from becoming financial department stores. Many state development companies are also licensed as non-bank lenders and/or Small Business Investment Companies. This regulation was designed to insure that community development through the use of the 503 program is the main activity of the Certified Development Company.

7(J) PROGRAM

With the enactment of Public Law 95-502 and the establishment of the division of minority small business/capital ownership and development at SBA, Congress intended that the 8(a) and 7(j) programs be used as minority business development programs. Congress recognized disadvantaged entrepreneurs needed management and technical assistance as well as financial and contractual assistance. What is the reasoning for the proposed $2 million reduction in the 7(j) program?

ANSWER:

The $2 million reduction in the 7(j) program is consistent with efforts to impose fiscal restraint on programs of national interest. The $10 million available for Fiscal Years 1981 and 1982 is the same level that was available in Fiscal Year 1980.

BUSINESS DEVELOPMENT EXPENSE

Your budget submission requests a reduction of $4 million for business development expense for disadvantaged firms. Have you assessed the impact on minority businesses of this reduction in funding?

ANSWER:

Although an in-depth assessment has not yet been performed, it is anticipated that the $4 million reduction will not have any significant effect on SBA clientele.

Please provide for the record a list of firms that received business development expense awards during this past fiscal year, and the amount of the award to each firm. Also, please indicate those instances where business development expense was awarded for price differential, for capital equipment or to defray other costs.

ANSWER:

Attachment IV is a summary of all firms that received BDE during the past fiscal year.

ATTACHMENT IV

SUMMARY OF FY 1980 BUSINESS DEVELOPMENT EXPENSE

REGION I

NAME	BDE COMMITTED	USE OF PROCEEDS
AA Glassmobile	25,000.00	CE 1/
Bar Pat Mfg. Co.	17,000.00	CE
B&T Contractors	24,225.00	PD 2/
Brock International	15,000.00	IE 3/
Car Ted Industries, Inc.	54,912.00	
Clean Giant	9,953.00	CE
Crystal Industrial Mat. Co.	25,300.00	CE
Data Signal Corp.	1,500.00	CE
Dave Gardner Contractor	69,475.00	CE/PD
D. H. Michael Co.	28,480.00	PD
Eastern Home Builders	11,193.00	PD
Grimes Oil Company, Inc.	160,963.15	CE
Henry J. Sockbeson	27,906.00	CE
Input Output Computer	148,479.00	MTA 4/
M&H Building Co.	11,741.00	CE
Blackside, Inc.	43,147.00	CE
Ernie's Const.	50,000.00	CE
Manassa Keypunch	43,000.00	CE/MTA
National Urbanonics	25,000.00	ES 5/
P. F. Industries	1,848,800.00	PD
Orduz Sportswear Co.	95,811.00	CE/PD
Rayco Painting Co.	5,000.00	PD
Shah Const. Co.	143,500.00	PD
Ormsby Roofing/Const.	20,500.00	IE
Yancey Minerals	161,090.00	MTA
Six Carpenters	60,410.00	PD
Southeastern Enter.	6,970.00	CE
Torres Construction Co.	116,516.00	PD
Total	3,250,871.15	

REGION II

NAME	BDE COMMITTED	USE OF PROCEEDS
Afro Carting Co.	4,000.00	PD
Afro-Lecon, Inc.	624,580.26	PD
Aljay Fuel & Oil Corp.	268,283.00	CE
Apoca Industries	347,675.98	CE
Arthur J. Choice	43,702.97	CE
Berg Chemical Company	46,195.36	PD
City Wide Security	104,834.39	
Covington Fuel Oil Co.	142,841.00	CE
C. H. Sanders Construction	42,282.00	CE
Diaz Contracting, Inc.	160,000.00	PB 6/
Durod Mfg. Co.	409,722.00	CE
Ebony Oil Corp.	38,851.15	CE
Edapco	103,717.00	CE
Monroe Wire & Cable	350,000.00	PD
Sparatec, Inc.	203,316.00	CE
Stanlee Business Forms	317,000.00	CE
Thirteen Mfg. Co., Inc.	116,111.00	CE
Vanguard Oil	352,892.00	CE
Velez Construction Corp.	2,310.00	PD
Wallace/Wallace Fuel Oil	210,000.00	CE
Tri Par Combustion Corp.	132,353.18	CE/IE
Total	4,020,667.29	

REGION III

NAME	BDE COMMITTED	USE OF PROCEEDS
Atris Associates, Inc.	22,000.00	PD
Cox Steel Rule Die Co.	3,808.01	CE
JWM Corp.	37,875.00	MTA
Larstone Corrugated	72,589.00	PD/CE
Medley Tool & Model Co.	47,648.80	

NAME	BDE COMMITTED	USE OF PROCEEDS
Norm Hodges & Assoc.	1,200,000.00	CE
Pandalai Coatras Co.	17,195.00	
Progress Aerospace	585,518.65	
R&R Optical Co.	401,526.17	PD
Resin System	14,846.00	
Robert Clay, Inc.	950,502.00	
Southeast Machine Co.	40,509.00	PD
Sperring White Corp.	22,581.65	
Systems & Applied Sciences	326,486.00	
United Chem Co.	150,078.00	PD
Wylie Centre Industries	139,965.89	PD
Total	4,033,129.17	

REGION IV

NAME	BDE COMMITTED	USE OF PROCEEDS
Amico, Inc.	186,358.00	CE
Chavis Tool & Mfg. Co.	90,178.14	PD
Collar, Inc.	36,122.00	
Fountain Enterprises, Inc.	76,049.66	MTA
H&W Contracting Co.	22,373.00	CS 7/
IJW Mfg. Co.	13,703.00	CE
Metropolitan Pallet Co.	71,000.00	CE
Pembroke Machine Co.	38,620.00	CE
Terry Mfg. Co., Inc.	285,402.00	PD
Tuskegee Lumber Co., Inc.	52,152.00	MTA
University Sportswear	93,013.14	PD
Urban Painting Co., Inc.	6,072.09	CE
Total	971,043.03	

REGION V

NAME	BDE COMMITTED	USE OF PROCEEDS
Abbott Products, Inc.	119,245.60	PD
Apollo Bedding, Inc.	32,350.00	CE
Cantronics, Inc.	168,690.00	CE
CIMA Machine & Tool	13,803.00	CE
Crayton's Southern Sausage	310,298.65	CE
Glanton Construction Co., Inc.	68,988.00	CE
L. H. Smith Oil Corp.	112,335.29	PD
Moreno Const. Co. Inc.	37,000.00	PD
Quality Coating/Supply	143,211.24	PD/CE
Thacker Const. Co.	542,420.00	CE
Thermo Dies, Inc.	9,195.00	CE
Total	1,557,538.78	

REGION VI

NAME	BDE COMMITTED	USE OF PROCEEDS
AAA Machine Metal/Stamping	122,897.26	CE
Aemcor Corp.	26,882.00	CE
Aleman Food Service, Inc.	117,774.00	CE
Aleph, Inc.	34,212.90	CE
AMCO Tool & Die Co.	75,000.00	CE
Athens Processing Plant	191,000.00	CE
The Craftsman, Inc.	52,425.00	CE
Delley Paving Service	19,770.50	CE
Diamond Farmer Construction Co.	47,500.00	CE
G.H. Tool & Die Co., Inc.	32,500.00	
H&H Meat Products, Inc.	176,700.00	CE
Harris System Pest Control	50,000.00	Training
J. P. Dickerson	188,000.00	CE
J & W Stainless Steel Fab.	181,907.48	
Kyle Machine Works, inc.	11,076.75	CE

REGION VI

NAME	BDE COMMITTED	USE OF PROCEEDS
Mary Lou Fashions	99,875.00	CE
Red Eagle Const. Co.	72,915.00	CE
Red Wing Products, Inc.	18,365.00	CE
Screen Arts Process	14,732.00	CE
South Houston Precision	4,656.48	CE
Longman Drilling Co., Inc.	270,000.00	CE
San Antonio Gen. Main.	3,504.00	CE
Total	1,811,693.37	

REGION VII

NAME	BDE COMMITTED	USE OF PROCEEDS
Aaron Oil Plumb/Sewer	47,000.00	CE
Anti Pest, Inc.	14,073.15	CE
Brecko Const. Co.	4,200.00	CE
Charles F/McAfee Arch.	13,375.00	CE
Hemphill Contracting Co.	173,244.00	CE
HLJ Mgmt. Group	230,000.00	CE
Hubbard & Hubbard, Inc.	126,236.00	CE
Hugh K. Edwards	7,809.62	PD
Leland L. Anderson (JV)	28,073.00	PD
North East Insulation	15,596.00	CE
Tibbs Construction Co.	24,035.00	PD
Total	683,641.77	

REGION VIII

NAME	BDE COMMITTED	USE OF PROCEEDS
Cantu Advertising	2,947.70	CE
Custom Doors, Inc.	21,170.25	CE
ITL Company (JV)	72,860.00	PD
J. K. Breiner Const.	508.08	PD
Maes Const. Co.	350,000.00	PD
Meiiji Resource	51,411.00	DP
Monaco Contractors	318,500.00	CE
Morning Star Enter.	69,772.00	CE
Ortega Roofing	2,500.00	PD
Robert Alvarado Const.	103,333.31	IE
West Electronics	6,770.00	CE
J. A. Walker Co.	33,963.00	PD
Keith's Electrical Const.	19,100.00	CE
Total	1,052,835.34	

REGION IX

NAME	BDE COMMITTED	USE OF PROCEEDS
Acudata Systems, Inc.	160,000.00	CE
Arcata Associates, Inc.	90.00	CE
Amex Systems, Inc.	652,977.36	CE
AVW Electronic Systems	391,680.43	CE
Beco Chemical Co., Inc.	93,119.94	CE
Computer Software Analyst	5,657.23	CE
G&D Aircraft Parts	129,500.00	CE
Univox-California, Inc.	1,222,896.28	PD
Zolatone Process, Inc.	215,185.34	PD
Superior Electronics	252,947.00	CE
Total	3,124,053.58	

SUMMARY OF FY 1980 BUSINESS DEVELOPMENT EXPENSE

REGION X

NAME	BDE COMMITTED	USE OF PROCEEDS
AOKI Bros. Const.	30,029.00	CE
A. Pearson Electrical	40,000.00	PD
Big Boy Janitorial	17,370.32	CE
Clean Services, Inc.	61,043.04	CE
F&G Const., Inc.	6,738.00	PD
Far West Electric	17,419.00	
Ferguson Const. Co.	59,667.00	CE
Flores Well Drilling	7,909.00	CE
Marmolejo-Hewson, Inc.	21,939.66	PD
Norwood Const. Co.	18,003.00	CE
Penney Reforestation	2,559.95	CE
Pro-Lysts, Inc.	6,475.00	PD
September & Asso., Inc.	32,000.00	CE
Spectrum Painting	5,342.80	PD
Sunset Const. Co.	25,885.00	CE
Urban Laboratories, Inc.	24,628.81	PD
Yamsey Electric, Inc.	9,584.08	PD
Kalispel Metal Products	121,915.00	CE

Summary of FY 80
BDE By Region

Region	BDE Committed
I	$3,250,871.15
II	4,020,667.29
III	4,033,129.17
IV	971,043.03
V	1,557,538.78
VI	1,811,693.37
VII	683,641.77
VIII	1,052,835.34
IX	3,124,053.58
X	508,508.62
Total	$21,013,982.10 1/

Use of Proceeds

CE - Capital Equipment

CS - Consulting Service

ES - Engineering Services

IE - Interest Expense

MTA - Management & Technical Service

PB - Performance Bond

PD - Price Differential

1/ The BDE committed net of refunds is $20,580 thousand.

Summary of FY 80
BDE By Region

Region	BDE Committed
I	$3,250,871.15
II	4,020,667.29
III	4,033,129.17
IV	971,043.03
V	1,557,538.78
VI	1,811,693.37
VII	683,641.77
VIII	1,052,835.34
IX	3,124,053.58
X	508,508.62
Total	$21,013,982.10
Less BDE committed but not disbursed	433,502.38
Total BDE disbursed	$20,580,479.72

Use of Proceeds

CE - Capital Equipment

CS - Consulting Service

ES - Engineering Services

IE - Interest Expense

MTA - Management & Technical Service

PB - Performance Bond

PD - Price Differential

What is your current policy on awarding business development expense -- i.e., have you instituted a moratorium on making business development grants? If so, how long do you expect to continue the moratorium?

ANSWER:

Presently, there is no national moratorium on the use of BDE in support of 8(a) companies in need of such assistance. Our policy remains as stated in Standard Operating Procedure 80-05. BDE awards must be associated with a specific 8(a) contract and must also be consistent with the established guidelines, i.e., field authority for price differential is 15 percent of contract value or $350,000, which ever comes first; for capital equipment and to defray costs - 50 percent of contract value or $350,000, whichever comes first. Approval of BDE above those guidelines must be made in Central Office, MSB & COD, with the concurrence of the Administrator.

8(A) PROGRAM

P.L. 96-481, among other things directs the SBA to negotiate fixed program completion dates for all firms in the 8(a) program and sets out a specific timetable for implementing the provision. As I am sure you know, the Agency has already missed the deadline for publishing regulations on fixing the dates. Where is the Agency now with respect to implementing this law?

ANSWER:

SBA has developed rules and regulations which have been proposed for implementation of P.L. 96-481. The proposed rules and regulations are currently undergoing review at the Office of Management and Budget and are expected to be published in the Federal Register prior to June 1, 1981.

Pursuant to P.L. 96-481, the proposed rules will allow public comments for a 30-day period, and after considering the comments and possibly revising the proposed rules, SBA will publish its Final Rules.

MSB/COD

The Carter budget submission on S&E-71, states that under P.L. 96-481, the President has designated three additional agencies to participate in Pilot Procurement program. On January 23, 1981, the Senate Small Business Committee held oversight hearings on President Carter's unauthorized designation of three additional agencies. I was assured by Acting Administrator Jones that corrective action had been taken. I assume that NASA, DOE and DOT are not in fact participating in the pilot program and that the statement in the budget submission reflects the earlier agency position. Is this in fact the case?

ANSWER:

Yes, the Department of the Army is the only Agency currently participating with the Small Business Administration in the 8(a) Pilot Program authorized by Section 8(a)(1)(B), of Public Law 95-507, as amended by Public Law 96-481.

TECHNOLOGY ASSISTANCE

Congress appropriated $1,223,000 to be used to fund technology assistance centers in FY 1981. How much of this money did you use for this purpose? Who were the recipients? You requested only $175,000 for technology assistance in 1982 - what will the impact of this reduction be on current program participants?

ANSWER:

We have planned obligations as of 4/28/81 for FY 1981 and FY 1982 for the following.

	($ in thousands) 1981	1982
Industrial Application Center (Univ. of Southern Cal.)	$75	35
New England Research Applications Center	85	35
Kerr Industrial Application Center	22	22
Industrial Application Center (Indiana Univ./Perdue University)	30	30
Technology Assistance Center (University of Kansas)	70	74
Technology Assistance Center (Region VIII) 1/	75	75
	357	271

1/ Proposed

I understand there is an interagency agreement between NASA and the SBA to fund the New England Research Application Center (NERAC) as well as other TACS and that SBA has set aside $50,000 for each center. Do you plan to spend this amount to fund NERAC regardless of what NASA does?

ANSWER:

SBA's share of funding NERAC is currently estimated at $35,000. It is anticipated that both SBA and NASA will jointly commit funding, however SBA most probably will commit funding regardless of what NASA does.

LOAN CONSOLIDATION PROPOSAL

The fiscal year 1982 budget request assumes passage of legislative proposal to consolidate the various loan programs. Assuming this proposal is not enacted, what levels of appropriation would the SBA request under existing law for each of the following programs:

-- 7(a) Regular Business Loans
-- 7(i) EOL Loans
-- 7(h) Handicapped Loans
-- 7(1) Energy Loans
-- 501 - 502 LDC Loans

Does the FY 1982 budget request assume that direct loan funds will be targeted to only three groups: Disadvantaged, Women and Handicapped?

Should the SBA make loans to otherwise qualified, Majority owned small businesses?

ANSWER:

If the loan consolidation proposal is not enacted the following loan levels reflect estimates under traditional programs for FY 1982.

	($ in Millions) Direct	Guaranteed
7(a) Regular Business Loans	$165	$2,775
7(i) EOL Loans	45	50
7(h) Handicapped Loans	15	5
7(1) Energy Loans	--	25
Development Company Loans	--	150

SBA has proposed that $18 million of direct loan funds be used for priority markets, which would be primarily majority owned businesses.

SBA, recommends that the Agency's limited direct loan funds be primarily utilized to serve the individuals whose needs have been under-represented in financial market actions. Disadvantaged, women and handicapped small business owners have been selected for priority treatment as a result.

Majority owned small businesses are much more likely to be successful in obtaining a loan from a bank or other conventional financing sources in SBA's guaranty program than these three groups.

The Congress specifically designed the EOL, energy, handicapped, and Development Company programs, to meet the needs of certain groups. The appropriations which Congress approves each year has indicated what percent of total resources should be allocated to these programs. The consolidation proposal usurps this congressional direction in favor of allowing the agency to determine its own priorities. Why shouldn't the Congress have a significant voice in establishing these priorities for federal funds?

ANSWER:

SBA does not intend to usurp congressional direction as to the allocation of SBA's lending. The consolidation proposal is intended only to make SBA's lending program more efficient and to reduce confusion among small business people as to the Agencies' lending programs. SBA would present a proposed allocation of the consolidated loan funds to the Congress each year as part of the budget presentation, and the Congress would continue to have the final authority on this question.

AMERICAN WOMEN'S ECONOMIC DEVELOPMENT CORPORATION

It is our understanding that the management training program run by the American Woman's Economic Development Corporation in New York City has been very successful. A recent article in the Wall Street Journal quoted an SBA official as saying, "It's the most effective training program we have."

Do you agree with this assessment and what are your plans for future funding of this program?

ANSWER:

AWED has been successful in offering one kind of training assistance to women business owners. Candidates with proven business potential receive a comprehensive program of lectures, workshops and case studies over a period of several months. The development of business relationships and a "peer support structure" are considered an important by product of this training. It is not surprising that the success rate for individuals who receive this training is relatively high considering the intensiveness of the program and the selectivity used in screening potential candidates. But, the program is expensive and relatively few women business owners can be served as a result. SBA plans to fund this program at a reduced level through the end of FY 1981 at which time a decision regarding future funding will be made.

INTERNAL PROCUREMENT PROCEDURES

The SBA has recently been criticized for its procurement techniques, including an exceptionally high percentage of sole source contracts, poor procurement planning and in some cases, circumvention of standard procurement practices. Some attribute these problems to understaffing in the contracts office. What action does the Agency plan to take to improve its performance in the procurement area?

ANSWER:

SBA has already taken action to improve SBA's procurement practices. Two professionals and an additional clerical employee were added to SBA's Office of External Awards last summer. This office is currently up to strength and is capable of handling SBA's contracting needs according to Federal Procurement Procedures. In addition, SBA has emphasized improved procurement planning, and indications are that the Agency's program offices are indeed improving their efforts in planning their procurement needs.

PROCUREMENT ASSISTANCE

The current budget request for procurement assistance is $21.9 million. The January budget recommended $27.2 million. What impact will this reduction have on SBA's program? What percentage, representing what dollar amount, of Federal prime contracts and subcontracts were awarded to small and small disadvantaged businesses in FY 1980? What impact did SBA's procurement assistance programs have on these figures?

ANSWER:

The change from $27.2 million to $21.9 million is in our Management Assistance program and is primarily due to the requested elimination of the Small Business Development Centers.

Prime Contracts

For FY 1980, total awards by all agencies was $91.1 billion. Of that amount, $21.5 billion was awarded to small business, or 23.6%. Separate figures for disadvantaged are not kept.

Subcontracts

In FY 1980 total subcontract awards were $29.6 billion. Of that amount $12.2 billion was awarded to small business, or 41.2%, and $.6 billion was awarded to minority business concerns (large and small), or 2.1%.

Pursuant to one provision of P.L. 95-507, the SBA is required to negotiate small and small disadvantaged business subcontracting goals with the other Federal procuring agencies. How many agencies achieved their FY 1980 subcontracting goals? Do you anticipate that the proposed 1981 government-wide budget reductions will have an impact on the ability of the Federal agencies to meet their 1981 goals? If so, will SBA renegotiate the 1981 goals?

ANSWER:

Of the top 22 federal agencies, 11 or 50% met or exceeded jointly established P.L. 95-507 goals for subcontracting. Overall, for the top 22 federal agencies, the total dollar goal was $12,592,375,000. Actual subcontracting reported (three agencies reported no subcontracting) was $12,205,545,000, or 96.9% of the dollar goal.

How many prime contracts awarded Federal agencies during FY 1980 contained subcontracting plans that were disapproved by the SBA? Will the SBA make any special effort, through educational seminars or other means, to reduce that number for FY 1981?

ANSWER:

Section 8(d)(11) of the Small Business Act requires (following each fiscal year) that the SBA submit to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives a report on subcontracting plans found acceptable by any Federal agency which SBA determines do not contain maximum practicable opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts described in the subsection. Under this authority, SBA field specialists, as resources permit, conduct pre-contract award and post contract award reviews of subcontracting plans. In our report submitted to the Congress on March 26, 1981, this review procedure, magnitude and results (including contract identification) are summarized.

During the early stages of P.L. 95-507 implementation, SBA personnel participated in many programs designed to introduce the subcontracting provisions, and attendant requirements, of this legislation. With the operational resources currently available, SBA's effort is devoted primarily to improving subcontracting plan quality on a case-by-case basis at 52 of the largest Federal military and civilian acquisition centers through the process of review (and comment) of proposed subcontracting plans; and, in addition, plan improvement is sought by direct contact with major prime contractors through the compliance review procedures carried on by SBA's subcontracts specialists. For the current fiscal year, the SBA regions carry some 479 major prime contractors' plants in their portfolios which are subject to subcontracting program compliance reviews.

How many firms are currently registered with the SBA Procurement Automated Source System (PASS)? How often is the PASS system accessed by potential users (agencies, prime contractors)? What efforts is the Agency making to increase the PASS portfolio? In your estimation, is this program a cost-effective means of increasing contracting opportunities for small businesses?

ANSWER:

As of April 28, 1981, 41,972 firms are on the PASS. The current usage of PASS is estimated at 2,500 searches per month and 20,000 company profiles displayed per month. The most significant accomplishment towards increasing the PASS portfolio has been to reduce the registration form from 16 pages to only 1. Over the past three months we have noticed substantial monthly increased registration. In addition, each regional office has been given recruiting goals and access terminals have increased from 40 to 75 making the small business community more aware of the availability of the PASS.

We are mandated by the Small Business Act to maintain an inventory of small firms. We believe that PASS is the most cost effective way to comply with this mandate, as well as the most efficient way to disseminate the capabilities of these companies to potential buyers on a nationwide basis.

What impact has the Certificate of Competency (COC) program had on the ability of the small business community to successfully compete for Federal contracts? How many certificates of competency were issued during FY 1980? How many Federal procurement dollars were awarded to small businesses as a result of the COC program?

ANSWER:

In FY 1980, 547 COC's were issued with a total solicitation value of $170 million. As a result of the COC program 520 contracts were awarded valued at $116 million.

1. Q. Prior to instituting a moratorium on licensing of SBICs, did you investigate what impact this action would have on potential licensees, and the number of potential licensees that would be impacted?

What actions were taken to mitigate the potential harm this moratorium would have?

A. While the initial moratorium of April 17, 1981 was blanket in nature, on April 28, 1981 the moratorium was lifted for license applications in process. This modification was made in light of potential hardships to applicants who had expended time and resources to develop and submit applications. The moratorium is being continued as to new applications for a period of 90 days.

2. Q. Did you consider taking other steps, rather than a moratorium on licensing?

A. No, but the moratorium is not a singular act, as we are using the moratorium period to review the SBIC Regulations, as noted below.

3. Q. Did the agency contact the industry, either directly or through the industry trade association to explain the purpose of this moratorium?

A. Each applicant in process, as well as the SBIC trade association, was advised by phone of the moratorium.

4. Q. Do you anticipate instituting any major changes in the administration of the SBIC and/or MESBIC programs in the near future?

A. We are carefully reviewing the SBIC Regulations and regulatory sanctions with a view to their improvement.

QUESTIONS SUBMITTED BY SENATOR BUMPERS

1. When the President submitted his revised budget for FY 1982 to the Congress, a supplemental appropriation request for the Disaster Loan Fund of $780 million was withdrawn.

a) How much money is in the Disaster Loan Fund today?
b) What are your anticipated needs for the Fund for the remainder of this fiscal year?
c) Will another supplemental be submitted to the Congress?

ANSWER:

The Disaster Loan Fund currently has borrowing authority of $700 million. The current level for funding is estimated at $2.07 billion of which approximately $1.4 billion has been approved through May 14, 1981. In addition, it is estimated that approximately $450 million represents estimated requirements towards existing disasters. Therefore, approximately $220 million is available for any additional requirements. There is no anticipated need for a supplemental at this time.

2. Last summer many parts of the country experienced the worst drought in decades. Rainfall and crop yields reached historic lows and the demand for disaster loans was unprecendented.

a) How many disaster loans have been made by SBA to persons as a result of last summer's drought, both number and amount?
b) How many disaster loan applications are currently outstanding and what is their face value?

ANSWER.

Through May 12, 1981, there have been 16,830 loans made for a total dollar value of $1,011.4 million related to the aforementioned drought. Currently there are 7,049 applications on hand for $427 million of which 7,052 for $373.4 million are drought related.

3. On March 10, 1981, SBA stopped disaster lending so that the existing regulations could be revised. This process took about one week and new regulations were issued concerning disaster lending by the agency. Primarily, these new regulations impose a "credit elsewhere" test for eligibility and place a 60% limitation on the amount of a person's loss which can be recovered through a disaster loan.

a) How many loans have been made since these new regulations were put into effect and for what dollar amount?
b) How many loans have been denied by your agency since these regulations have been in effect?
c) Is SBA taking any steps to ensure that some farmers don't fall through the cracks and are denied assistance from any source?

ANSWER:

From March 19, 1981 until May 14, 1981 the Agency has approved approximately 5,500 loans for a total dollar amount of $234.1 million. In addition to these amounts, approximately 11,775 loans for $503.4 million have been denied. The Farmer's Home Administration is the principal source of farm related disaster assistance. If FmHA denies assistance to a farmer and he comes to the Small Business Administration, then he is subject to our loan qualification guidelines. If that farmer can get credit elsewhere, then the SBA will deny assistance. In effect, the farmer has received no federal assistance.

4. Monday, April 27, the Senate Small Business Committee, under the leadership of Chairman Weicker, reviewed contracting policies of the SBA and heard of several examples of questionable practices by SBA officials.

What steps are you prepared to take and have you taken any action to prevent further waste and abuse in SBA contracting?

ANSWER:

SBA has already taken action to improve SBA's procurement practices. Two professionals and an additional clerical employee were added to SBA's Office of External Awards last summer. This office is currently up to strength and is capable of handling SBA's contracting needs according to Federal Procurement Procedures. In addition, SBA has emphasized improved procurement planning, and indications are that the Agency's program offices are indeed improving their efforts in planning their procurement needs.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

BUSINESS LOAN AND INVESTMENT FUND

1. What is the current interest rate on direct loans?

ANSWER:

The current interest rate on direct loans is as follows:

7(a) Business Loans	9 1/4%
7(h) Handicapped Loans	3 %
7(i) Economic Opportunity Loans	11 3/8%
7(l) Energy Loans	9 1/4%
Development Company Loans	9 1/4%

2. What is the current interest rate on guaranteed loans?

ANSWER:

The current interest rate on guaranteed loans is computed on New York Prime Rate plus a maximum of 2 1/4% on loans maturing less than 7 years and the New York Prime Rate plus a maximum of 2 3/4% on loans maturing in 7 years or longer.

3. What is the basis of the estimate that demand for direct loans will decrease due to increasing the interest rates on direct loans to the same as the rate on guaranteed loans?,

ANSWER:

As long as direct lending remains at approximately half the market rate, their still will always be an unlimited demand. By raising the direct rate comparable to the guaranteed rates it will allow SBA to direct its rescurces to those small businesses unable to obtain financing even with government credit guaranteeing 90% of the loan.

4. How different is the rate on guaranteed loans from the rate charged by banks on non-guaranteed loans?

ANSWER:

Rates on non-guaranteed loans are two to five percentage points higher than the rates on SBA guaranteed loans. This assumes that the lending institution would make the loan without the SBA guaranty. In many cases, especially those involving inventory and accounts receivable as collateral, lenders will not make loans to small businesses on any terms.

5. SBA once again is proposing to consolidate the various business loans into targeted assistance for disadvantaged women and handicapped. The Congress turned that approach down last year. Why is it being proposed again?

ANSWER:

It is felt that by consolidating the lending programs the SBA will be better able to optimize its impact on the small business community. Additionally, the Agency feels that increased emphasis towards priority markets such as socially and economically disadvantaged firms, women owned firms, etc. would benefit the small business community by actively seeking those businesses most in need of our assistance.

6. Is SBA now operating under the consolidated loan basis?

ANSWER:

No, we are still operating under the traditional programs.

7. This year some new wrinkles are being added to the consolidated loan proposal. In addition to the 3 target groups, funds are proposed for priority markets, as well as for a contingent fund.

-- Please explain, what are priority markets?
-- Why is $20,000,000 budgeted for priority markets in 1981 since this new program was not requested last year?
-- Why is a contingent fund required?

ANSWER:

Priority markets will include industries for which small business is currently excluded from effective competition, as well as other national or regional efforts targeted toward industries or markets most in need of SBA's services. Priority market lending decisions would be made at the local SBA office, and would depend on local economic conditions. Priority markets could include such businesses as high technology firms, innovative products or processes, exporting businesses, as well as others. SBA local offices would be instructed to use these funds to promote business activity least likely to develop without this assistance.

$20 million is requested by SBA for priority markets in FY 1981. This amount would be reallocated from traditional programs.

A Contingent Fund of $50 million direct loan dollars has been requested in SBA's FY 1982 budget request to the Congress. The purpose of this fund is to assure that disadvantaged, women and priority market businesses receive an appropriate share of SBA's business loan dollars. Historically, the participation of these businesses in SBA's loan guaranty program has fluctuated due to economic conditions and other factors which affect lending to businesses perceived as "marginal risks" by the banking community.

The use of this contingent fund would be linked with the implementation of SBA's operating plan. The Regional Operating Plan (ROP) will contain goals for the percentage of guaranteed lending made to disadvantaged, to women owned and priority market businesses. If actual loan guaranty results fall short of the ROP goals, then the Contingent Fund would supplement the amount of guaranteed lending. Should actual loan guaranty results exceed the ROP goal, this contingent fund of direct dollars would not be used in that fiscal year.

8. What is the current average number of loans assigned to the Portfolio Management personnel?

ANSWER:

The average number of loans assigned to Portfolio Management personnel is 589.6 loans per staff member.

484,644 (total loans 2/81) divided by 822 (total field PM staff 2/81) equals 589.6.

9. What will be the effect of the addition of the 143 new positions on the average number of loans assigned each person?

ANSWER:

The effect of an additional 143 new positions in Portfolio Management will reduce the average number of loans assigned per staff member to 502.2 from 589.6.

484,644 (total loans 2/81) divided by 965 (total PM field staff 2/81 plus 143) equals 502.2.

DISASTER LOANS

10. What is the basis in law for SBA to determine the "disaster victims who are most deserving" of disaster assistance?

ANSWER:

SBA does not differentiate between the "most deserving" and the less deserving, rather we differentiate on a basis of need: home owners before business, credit or resources not available before credit or resources available.

The wording of the Act itself authorizes the disaster loans which it deems "necessary or appropriate." This, in our opinion, recognizes the fact that there is a limitation on funding resources and the administration's responsibility to make a reasonable determination as to the victims which should receive assistance, i.e., when assistance is appropriate.

11. What is SBA's authority to impose a credit elsewhere test on disaster loans to businesses?

ANSWER:

Section 5(b)(6) of the regulations authorizes the Administrator to make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to the Small Business Act. In addition, 5(b)(7) of the Small Business Act authorizes the Administrator in relevant part to "... take any and all actions ... determined by him to be necessary or desirable in making ... loans made under the provisions of this Act." This provision is broad and the phrase "necessary or desirable" would authorize these changes made in the regulations, provided that such changes do not violate other provisions of the Act or other relevant statutes. Moreover, both 7(b)(1) and 7(b)(2) authorize the Administration "to make such loans ... as the Administration may determine to be necessary and appropriate ...".

12. SBA has already obligated more than $1,000,000,000 on disaster loans. Is it fair for the Agency to turn down, by regulation, disaster victims who might be more "deserving" than those who received assistance prior to the new regulations?

ANSWER:

The distinction between those who received assistance under the old regulations and the new regulations is not one of "deserving" but one of availability of funds.

This is a question over which the agency had no control at the time that a decision had to be made on how to carry out the programs for the remaining 6 months of the fiscal year. Obviously, if we had the ability 6 months or 1 year earlier to foresee future events, a different decision could have been made.

13. Disaster loans to businesses will not be limited to 60% of verified loss. How does a merchant who has lost his store in a flood only rebuild 60% of his building and stock?

ANSWER:

He may choose to do this, if he can show that he will be able to operate at a rate of profit sufficient to repay his loan. If not, he will have to arrange some means to obtain part or all of the 40%. The agency will assist to the extent that it will consider subordinating its position to another lender to the extent of the 40%.

14. Over the last 5 years, how many disasters, i.e., floods, tornadoes, etc. have occurred between January and September of each year?

ANSWER:

See Attachment I.

ATTACHMENT I

Following is a breakdown (per year) on the number of disasters that have occurred between January and September during the last 5 years:

Type	1976	1977	1978	1979	1980	1981 to date
02 Earthquake			2	1	3	
04 Explosion (with or without fire)	1	1	1	2		1
- Dam Collapse *Teton	1*					
05 Fire	11	16	15	17	26	4
06 Floods - includes flooding, heavy rain, cloudburst, typhoon, & high tide	36	35	56	85	48	5
09 Mudslide /Landslide			1			
08 Hurricane *Belle (2) **David (8) **Frederic (3) ***Allen (2)	1*			2**	1***	
11 Storm (not classified as hurricane or tornado, i.e., high wind, hail, snow, freezing rain	8	17	18	20	24	
12 Tornado	14	10	21	13	24	2
13 Volcanic Eruption					4	
14 Natural: Drought	7	22	10	11	21	
15 Manmade: Civil Disorder Riot		1			1	

15. How much is budgeted for possible disasters this spring?

ANSWER:

The Disaster Loan Fund currently has borrowing authority of $700 million. The current level for funding is estimated at $2.07 billion of which approximately $1.4 billion has been approved through May 14, 1981. In addition, it is estimated that approximately $450 million represents estimated requirements towards existing disasters. Therefore, approximately $220 million is available for any additional requirements.

16. The Small Business Act, as amended, authorizes SBA to provide loans to individuals whose real estate and personal property are damaged as a result of a disaster. Several GAO reports -- the most recent of which is "Poor Controls Over Federal Aid in Massachusetts after the 1978 Blizzard Caused Questionable Benefit Payments" (CED-81-4, January 26, 1981) — pointed out the need for better coordination among the various agencies providing disaster assistance to prevent duplication and other erroneous payments to disaster victims. SBA was

recently participated in several field tests of a new "Combined Application and Verification Process" which is intended to reduce the incidences of duplication.

-- What is SBA's reaction to the field tests?
-- Can the new process be implemented effectively nationwide?

ANSWER:

In response to the GAO Audit on the 1978 Massachusetts Blizzard, the Agency has pointed out that the avoidance of duplication of benefits is a responsibility of the Federal Emergency Management Agency. SBA has been, and remains, willing to cooperate in reasonable procedures to avoid duplication. SBA believes this can be accomplished by a simple system for exchange of information involving automated reporting. It is the opinion of SBA that the CAVP system was an utter and complete failure. In addition to failing to work, it was extremely expensive in that it required extraordinarily high levels of personnel.

17. Aside from the problem or coordination, the above cited report pointed out that the initial disbursement of many loans was delayed in the disaster, A more recent check by GAO showed that such delays are still a significant problem. For example, as of September 1980, relatively few disbursements had been made on approved disaster loans for disasters that occurred since December 1979.

-- What are the causes for these delays?
-- Will the new application and verification process result in more timely loan disbursements?
-- Does SBA have other suggestions for expediting this assistance?

ANSWER:

With regard to the problem of slow disbursement, we have not yet seen GAO's report on this problem. We do, however, know that such situations have occurred on occasion. We believe this type of situation to be the "exception rather than the rule." We believe such situations result from inexperienced supervisory personnel. We further believe that this type of situation can be avoided by the use of fully experienced, full-time supervisory disaster personnel. Such a system is currently being considered for full implementation utilizing the concept of a full-time cadre working in four disaster area offices under Central Office control.

MANAGEMENT ASSISTANCE

18. The Conference Report on the 1981 appropriations stipulated that $9,500,000 was included for Small Business Development Centers. SBA is proposing to limit spending to $4,800,000. Will the reduced amount be sufficient to maintain all SBDC's now in operation through Fiscal Year 1981?

ANSWER:

With the anticipated elimination of the SBDC program in FY 1982 the proposed $4.8 million should be adequate to maintain the current SBDC's now in operation. However, we have re-evaluated the requirements for existing as well as approved SBDC's for FY 1981, and found these would require approximately $7.5 million.

19. The original justifications said that "The Small Business Center Program is considered the prototype of the management assistance delivery system of the future". The revised 1982 budget eliminates all funding for SBDC's. What happened to the prototype?

ANSWER:

SBA has always had the responsibility to provide management assistance to small business. The SBDC concept was developed with the idea that it would expand our capabilities and allow us to provide assistance to a much larger audience within a state. The program is a university-based delivery system tailored to specific needs using local resources. It was anticipated that when fully operative nationwide that it would possibly be the MA delivery system of the future. However, we are now part of an overall economic recovery effort and feel strongly that we must share in the "pain" of reduction. As this program is still in the prototype stage it was determined that we could best assist in reducing specific Government costs by not funding the program for Fiscal Year 1982. We are by no means abandoning our management assistance efforts, but will concentrate on developing assistance efforts using whatever local talents that are available to us.

20. SBA relies on volunteer organizations for the majority of its management assistance efforts. Has any assessment been made of the quality of assistance provided by these organizations?

ANSWER:

In the district offices the Assistant District Director for Management Assistance is responsible for assuring effective application of the primary management assistance resources which includes all volunteers. Daily operations include oversight of volunteers who handle "walk-in" inquiries in the office itself, those who handle substantive business counseling cases, and those who conduct training programs or sessions. Thus, there is an on-going interaction during which continuous assessment is made of effectiveness and appropriate changes made. For example, when a volunteer is selected to conduct a training session and performs poorly he or she will not have such an opportunity again. The main point is that the volunteer program is managed to retain quality contributions. This is, therefore, the most important aspect of quality control whereby assessments and resultant management actions are performed consistently within the limits of available stafftime.

The largest group of volunteers are members of SCORE (Service Corps of Retired Executives). Their 8000 members are located in 394 Chapters throughout the nation. The 1979 overall impact study of management assistance conducted by the Rockville Consulting Group, Inc., generally gave SCORE volunteers good marks for the quality of the assistance they provided. SBA currently has a contracted independent study underway which deals exclusively with SCORE. The purpose of the study is to assess the contributions of SCORE as a management assistance resource and to identify factors which contribute to its effective operation. Results will be available in the Fall of 1981. By that time we expect the second largest group of volunteers, ACE (Active Corps of Executives) will be fully integrated into SCORE.

In addition to the SCORE and ACE resources, SBA also has cooperative agreements with 21 professional and trade associations to provide management and technical assistance to small businesses. These associations not only provide specialized counseling services, but co-sponsor many of our management training seminars and workshops. An in-depth assessment has not been made, but all services performed by the associations are under the supervision and close scrutiny of the field management assistance personnel who use them.

MINORITY BUSINESS
MANAGEMENT ASSISTANCE

21. Pursuant to P.L. 95-507, the Associate Administrator for Minority Small Business and Capital Ownership Development operates two management assistance programs under Section 7(j) of the Small Business Act. These two programs are commonly referred to as 7(j)(1-9) and 7(j)(10). The two programs differ in their target groups and the types of assistance provided. During fiscal years 1979 and 1980, the 7(j) appropriation was split in half with approximately $5 million allocated to each program.

-- What factors did SBA consider in making this split?
-- To what extent was it based on an assessment of program participants' needs?

ANSWER:

The 7(j)(1-9) and 7(j)(10) funds were evenly divided among the two programs. Based on responses from our regional offices we felt that this split provided the best assessment of program participants needs.

22. Regarding the 7(j)(10) program, in fiscal year 1980 a further division was made which resulted in $3 million being allocated to the SBA regions with $2 million being retained at SBA headquarters. We understand that the $2 million retained by headquarters was used to fund 14 sole source contracts and that most of these were unsolicited proposals. Why does SBA have to rely on unsolicited proposals? Hasn't SBA management developed an overall program plan for administering this program or is it relying on outside consultants for direction?

ANSWER:

We were not relying on outside consultants for direction of the 7(j) program. The $2,000,000 that was retained by Central Office for the 14 sole source contracts went for a variety of specialized services such as construction, management, accounting, as well as assistance to identify manufacturing opportunities for 8(a) firms. Consistent with P.L. 95-507 some of the funds went to help strengthen the minority trade association. We feel that we have developed an overall program plan and have a central office committee that now provides this direction.

23. The purpose of the 7(j)(10) program is to provide various kinds of management and technical services exclusively to 8(a) firms. Since there are currently about 2,000 firms in the 8(a) portfolio, and given the limited resources allocated to this program, there seemingly are two major options for accomplishing the program objectives. These are (1) provide limited assistance to all, or (2) provide extensive assistance to a few. Which option has SBA adopted and why?

ANSWER:

We primarily accepted regional input from all our offices through our Regional Operating Plans (ROP's). After satisfying the Regional requirements, we then set aside the residual for specialized services. It should be understood that 8(a) firms are also eligible for assistance from contracts funded from 7(j)(1-9), if necessary. It was felt that our plan provided the greatest amount of latitude for the entire minority small business community.

24. Public Law 95-507 created a special 2-year pilot contracting program between SBA and a Federal agency that was to be designated by the President. The Department of the Army was later designated as the pilot agency. The pilot program was extended an additional year by Public Law 96-481. In a recent GAO report "The 8(a) Pilot Program for Disadvantaged Small Businesses Has Not Been Effective" (CED-81-22, January 23, 1981) GAO noted that the successful use of the pilot program depends on (1) SBA's ability to have information available on the qualifications of 8(a) firms, and (2) SBA's knowledge of procurement opportunities, to judge whether each 8(a) firm selected can do the job. These requirements can only be fulfilled if SBA has a workable system ensuring that its field personnel are used in critical decisions regarding the selection and certification of firms. What progress has been made in developing such a system?

ANSWER:

Our new pilot program procedures charge our SBA field personnel with the selection or certification of 8(a) firms for pilot program participation, and also the selection of requirements for the firms. We believe that by involving our field personnel in these critical decisions we will enhance the effectiveness of the program.

25. Section 8(A) of the Small Business Act gives SBA the authority to enter into procurement contracts with Federal agencies for the purpose of subcontracting to small business. The authority is intended to help socially and economically disadvantaged small businesses achieve a competitive position in the financial marketplace. The SBA fiscal year 1982 Budget Estimate on page S&E-68 emphasized the need to improve the quality of assistance to minority and socially and economically disadvantaged entrepreneurs through increased activity on the part of Minority Small Business Specialists (MSBSs). The Budget Estimate also states on page S&E-6 that the 8(a) portfolio will be stabilized at 2,100 firms (as of September 30, 1980, the portfolio had 1,937 firms). SBA's MSBSs are already faced with a large caseload. For example, as of September 30, 1980, the nationwide average of 8(a) firms per MSBS was 20.2. Yet a 1975 SBA work

standards study determined that 8 to 10 firms was considered the ideal number of active firms for servicing by a MSBS. Under these circumstances, how does SBA intend to improve its quality of assistance to minority and socially and economically disadvantaged entrepreneurs?

ANSWER:

This question is currently under active consideration and is somewhat difficult, at this time, to answer. We will have to defer our answer until the results of a more current study are compiled.

26. The recreational vehicle industry and the campground owners believe they should be eligible for the Emergency Energy Shortage Economic Injury Loan program. The previous Administration acknowledged that these groups had "suffered economic hardships as a result of the 1979 gasoline crunch", but determined that they were not eligible for the EESEI program.

Has the Reagan Administration given any thought to the eligibility of these groups for this assistance?

ANSWER:

This is not a question that would involve administration philosophy. This is a question that involves the specific language of the statute. Subsection 7(b)(8) of the Act provides EESEI assistance as a result of a shortage of fuel. The problem faced by the RV industry and campgrounds is not based on shortage, but on the increasing cost of fuel. SBA remains of the opinion that this situation does not qualify under the language of the statute.

27. In December 1980, GAO reported that more borrowers of Economic Opportunity Loans had defaulted on the loans than had repaid them ("Most Borrowers of Economic Opportunity Loans Have Not Succeeded in Business", CED-81-3, December 8, 1980). GAO also found that even most of the borrowers who repaid their loans did not remain in business. GAO reported that Federal losses were large (about $324 million through Fiscal Year 1979) and that the costs of failure to unsuccessful borrowers were high. GAO called program results "unsatisfactory". SBA's written comments on GAO's report did not indicate whether SBA agreed with this conclusion or whether it had any ideas for correcting the programs's problems.

-- What is SBA's position on the issues raised by GAO?
-- What can be done to improve the program?
-- Aren't there other programs for disadvantaged businesses which could possibly use the funds more productively?

ANSWER:

The Agency did not agree with GAO's findings in the Economic Opportunity Loan Program. This program was recognized as a high risk program from the outset. Congress has never indicated what it considered an acceptable loss level in the working of EOL Loans. In light of the original objectives of the legislation, the Agency believes the program has been successful. If those objectives are still considered valid by the Congress, and in the absence of a stated acceptable loss level, there are no other programs for disadvantaged businesses which could use the funds more productively.

28. Last year there was considerable controversy about the manner that SBA handled the Senior Executive Service bonuses. The concern centered on the number of people on the SES board who awarded themselves bonuses.

-- How many SES personnel does SBA have?
-- How many SBA/SES personnel received bonuses last year?
-- Which members of the SES board were awarded bonuses and in what amounts?
-- For what period of service were these bonuses awarded?
-- What was the range of SBA employment for personnel receiving the bonuses?
-- Does SBA intend to revise its procedures for awarding SES bonuses?

ANSWER:

The SBA has 53 SES slots of which 34 are presently encumbered. During FY 1980, 19 bonuses were given to 16 SES personnel. The members of the review board that received a bonus are as follows:

- Donna Harrigan	$5,289	- Regional Administrator (Chicago)
- Jean Lewis	4,760	- Associate Administrator/CLA
- Joseph Maas	4,760	- Associate Administrator/PM
- Bernard Kulik	3,967	- Associate Administrator/PA
- Albert Prendergast	3,838	- Associate Administrator/FS
- William Gennetti	3,173	- District Director (Phil.)
- George Robinson	2,644	- Dir., EEO&C

These bonuses were for the first six months of FY 1980. The tenure of service of employees who received bonuses ranged from 1964 to 1979 with an average of 10 years service. SBA has outlined revisions in a proposed SOP.

FEDERAL MARITIME COMMISSION

STATEMENT OF LESLIE L. KANUK, ACTING CHAIRMAN

ACCOMPANIED BY:
THOMAS F. MOAKLEY, COMMISSIONER
FRANCIS C. HURNEY, ACTING MANAGING DIRECTOR
FREDERICK TRUTKOFF, DIRECTOR, OFFICE OF BUDGET AND FINANCIAL MANAGEMENT

BUDGET REQUEST

Senator WEICKER. Our next request is that of the Federal Maritime Commission.

The amount requested is $11,423,000, a reduction of 78 positions and $648,000 from the 1981 base. This amount provides for 301 work-years for employment, which is 38 work-years less than fiscal year 1981.

Appearing on behalf of this request is Dr. Leslie Kanuk, Acting Chairman, who is accompanied by Commissioner Thomas Moakley; Francis C. Hurney, Acting Managing Director; and Fred Trutkoff, Director, Office of Budget and Financial Management.

It is my understanding, Dr. Kanuk, you are the Acting Chairman. Your term expires in June of 1981. Therefore, you can say anything you want to say.

You are not under any restrictions from OMB, by the administration. So pour your heart out. Welcome.

Dr. KANUK. Thank you.

Mr. Chairman, I am Leslie Kanuk, Acting Chairman of the Federal Maritime Commission. I have with me today Commissioner Thomas F. Moakley, who chaired the Commission's Committee on Reorganization; Mr. Francis C. Hurney, Acting Managing Director; and Mr. Fred Trutkoff, Budget Director.

To give the committee a better perspective on the nature and scope of our work, Mr. Chairman, I would like to review briefly the major functions and duties of the Federal Maritime Commission.

First, we evaluate requests for antitrust immunity for joint ratemaking authority on the basis of stringent statutory guidelines, balancing the needs of carriers against the needs of the American public.

We license and supervise the activities of freight forwarders in order to discourage malpractices and to protect the shipping public.

We serve under delegated authority to certify the financial responsibility of vessel owners to clean up pollution resulting from oilspills and toxic discharges.

We certify the financial responsibility of passenger vessels to indemnify passengers for death, injury, or nonperformance.

To prevent discrimination among shippers, we serve as a central repository of tariffs and we require carriers to adhere to their filed tariffs.

To protect our private carriers from unfair competition from State-controlled carriers, we administer the Controlled Carrier Act of 1978, which is designed to eliminate predatory rate cutting in our trades.

We serve as arbiters in settling disputes among carriers and shippers.

Finally, in order to assure that carriers do not discriminate among shippers, we have an active enforcement program in which we respond to complaints and initiate investigations.

Our objectives for 1982 are to administer these programs promptly, fairly, and in the broad public interest. The Commission has recently caught up with a substantial backlog of formal proceedings and agreements which had accumulated over a number of years. We have every intention of remaining absolutely current in the years immediately ahead.

In fiscal year 1980, the Commission settled 47 enforcement claims, primarily for illegal rebating in the U.S. foreign commerce. The $3½ million we collected in civil monetary penalties is obviously not reflected in our budget, but we think should be considered in terms of the Commission's overall cost effectiveness.

One of our major concerns recently has been the development and installation of management control systems designed to prevent fraud and reduce the likelihood of error and waste.

In fiscal year 1980, an internal audit unit was established to monitor the Commission's operations and identify questionable operational areas for timely corrective action. Our goal for 1982 is to improve the efficiency of our operations and reduce the possibility of fraud and waste by strengthening our internal controls.

A computer program for measuring productivity in several of our key bureaus has been designed, tested, and installed. The preliminary results from the pilot test are presently being evaluated. Increasing productivity is especially important to the Commission under reduced personnel ceilings.

Treasury regulations require that agencies conduct their financial activities in a manner which makes available to the Treasury, on a continuing basis, the maximum amount of cash for the purposes of investment and to avoid unnecessary borrowing. We have a viable cash management program in operation. We expect even greater efficiency when this program is automated.

The Commission is committed to the President's goal to reduce growth in the size of Government and to bring Government spending under control.

We are reviewing all of our current programs for the purpose of consolidating, paring down and reorganizing programs wherever possible, to develop the most effective and efficient operation.

The committee should be aware that our stringent budgetary constraints may be severely affected by several new statutory requirements, the precise impact of which are presently unknown. For example, title II of the Equal Access to Justice Act, Public Law 96–481, which was signed into law in October 1980, provides for repayment of fees and other expenses incurred by prevailing parties in Federal agency adjudications, and in civil actions in courts of the United States.

Also, the Omnibus Reconciliation Act of 1980, Public Law 96–499, section 1023, requires that Federal agencies reimburse the Federal employees' account for unemployment benefits provided to civilian employees and former civilian employees of Federal agencies for Federal service performed. The impact of this legislation on our 1982 budget is also unknown.

Our workload is expected to increase with the enactment of the Paperwork Reduction Act of 1980—Public Law 96-511. This act, through delegation to the Director of the Office of Management and Budget, requires that agencies prepare annually a budget detailing the information collection burden the agency imposes on the public. Agencies must also develop procedures for assessing the paperwork and reporting burden of proposed legislation affecting the Commission.

This act, incidentally, might require more paperwork on our part.

Senator WEICKER. I was just reading that sentence, "Our workoad is expected to increase with the enactment of the Paperwork Reduction Act."

Dr. KANUK. Our anticipated appropriation for fiscal year 1981, including supplemental pay costs, is $12,107,000, providing for 306 permanent positions. We respectfully—or should I say regretfully—support the President's budget reduction request for $11,423,000 and 301 work-years of employment for permanent positions in fiscal year 1982. This revised budget request reflects a $684,000 reduction from our fiscal year 1981 budget without taking into consideration the decrease in the real value of money due to inflation.

In order to achieve our objectives in fiscal year 1982, we respectfully request favorable consideration of our budget submission and hope that you will support our efforts to carry out our statutory responsibilities.

I will be happy to respond to any questions.

PAY SUPPLEMENTAL

Senator WEICKER. In the original fiscal year 1982 budget submission, the Federal Maritime Commission stated that its budget authority for fiscal year 1981 included a supplemental requirement of $492,000 to cover civilian pay increases which became effective in October 1980.

In the revised budget estimate for 1982, the Federal Maritime Commission states a need for only $107,000 for this same requirement.

Can you explain how the Federal Maritime Commission plans to cover the civilian pay increases with such a reduced amount?

Mr. TRUTKOFF. The reduction from $492,000 to $107,000 will be achieved through savings that will be generated from unfilled positions during the hiring freeze. As a result of these vacancies, we will be able to save the money. In addition, OMB reduced our ceiling to 306 positions. These restrictions will enable us to reduce the pay act costs by $385,000.

Senator WEICKER. Your enforcement activities have revealed an increasing number of disclosures of illegal rebating activities. Has the Commission ever considered restricting or prohibiting access to the U.S. ports for repeated offenders?

Dr. KANUK. As far as I know it has not.

Senator WEICKER. Would it have any effect?

Dr. KANUK. I suspect it might have some effect. I, frankly, would like to give that some thought and prepare a written response.

TRAVEL BUDGET FOR ENFORCEMENT

Senator WEICKER. All right.

Your travel budget of 1 percent of the total budget seems rather modest. How much of this budget is for the Bureau of Enforcement and Investigation? Do you feel this amount is adequate?

Dr. KANUK. I must say that all of our travel budget has been pared down tremendously. I wonder whether the Managing Director would like to respond to that.

Mr. HURNEY. The Bureau of Investigation and Enforcement receives the top priority in allocation of travel funds. We feel the present travel budget is adequate.

Dr. KANUK. I believe about 80 percent of our total budget is salaries.

Mr. HURNEY. We have not had difficulty in the past with our travel budget. As I say, the enforcement matters receive the first priority.

Senator WEICKER. I wish you would supply a breakdown of the travel budget by bureaus and offices for the record.

Dr. KANUK. We can do that.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have a couple of other questions, as do many other Senators, which will be submitted for response for the record; otherwise, have a very nice day.

[The following questions were not asked at the hearing but were submitted to the Commission for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Pay Supplemental

Question 1. In the prior fiscal year 1982 budget submission, FMC stated that its budget authority for fiscal year 1981 included a supplemental requirement of $492,000 to cover civilian pay increase which became effective in October 1980. In the revised budget estimate for 1982, FMC states a need for only $107,000 for this same requirement.

Please explain how FMC plans to cover the civilian pay increases with such a reduced amount.

Answer. The Federal Maritime Commission will be able to absorb the $385,000 of pay act costs through savings that will be generated from unfilled positions during the hiring freeze in FY 1981.

Lapsed Positions

Question 2. In the prior fiscal year 1982 budget submission, FMC estimated 27 lapsed positions for $725,134. In the revised budget submission, FMC is estimating 65 lapsed positions totaling $1,457,730.

Answer. The original 1982 budget of $12,525,000 was reduced to $11,423,000 by the Office of Management and Budget. In order to accomplish this reduction, it was necessary to increase our lapses which in effect reduced the number of workyears for permanent employees in FY 1982.

The Commission is currently conducting an evaluation of all programs to identify the most feasible methods of reaching the Commission's lowered personnel ceiling and workyears while continuing to effectively discharge its major responsibilities.

The following is a tentative breakdown of workyears for 1982 by Bureau/Office.

Summary of Permanent Workyears

	Original (Carter) 1982	Current 1982 Estimate
Formal Proceedings	60	59
Office of Commissioners	19	19
Office of the Secretary	8	8
Office of the General Counsel	22	21
Office of Administrative Law Judges	11	11
Office of Regulatory Policy and Planning	6	4
Office of Consumer Affairs	3	2
Office of Energy and Environmental Impact	6	6
Bureau of Agreements	38	34
Bureau of Tariffs	74	58
Bureau of Certification and Licensing	28	25
Office of Director	4	4
Office of Vessel Certification	17	14
Office of Freight Forwarders	7	7
Bureau of Investigation and Enforcement	22	21
Field Offices	55	48
Atlantic District	17	12
Mid-Atlantic District	6	5
Great Lakes District	3	3
Gulf District	12	11
Pacific District	14	14
Puerto Rico District	3	3
Administration	47	44
Office of Managing Director	7	6
Office of Personnel Management	10	9
Office of Budget and Financial Management	5	5
Office of Management Evaluation and Review	6	5
Office of Data Systems	8	8
Office of Administrative Services	11	11
Total	339	301

Rebating: Repeated Offenders

Question 3. Your enforcement activities have revealed an increasing number of disclosures of illegal rebating activities. Has the Commission ever considered restricting or prohibiting access to the U.S. ports for repeated offenders?

Answer. The increasing number of disclosures of illegal rebating activities to which you refer is primarily a result of an increase in the number of companies that have paid penalties for rebating violations occurring before June of 1979. This includes both carriers and shippers. At this time, the Commission could not prove that any particular company is a repeated offender to the extent that drastic measures would be warranted, although investigations continue to be developed in the field and may single out certain carriers for special enforcement action. New section 18(b)(7) provides for tariff suspension, not prohibition of access to United States ports -- although, under certain circumstances, this may be tantamount to the same result. It should be borne in mind that suspension of tariffs would be predicated upon failure to comply with subpoenas or discovery requests in formal proceedings. Moreover, this section does not limit the drastic tariff suspension penalty to recidivists, although they would be the most likely subjects of such action. Most significantly, the notices of settlements for rebates to which you refer involve violations occurring before the passage of Pub. L. 96-25 (June 19, 1979), and application of section 18(b)(7) to the older violations might be ex post facto. Thus, we are considering appropriate appreciation of section 18(b)(7) to cases which involve violations occurring since June 19, 1979, and which are just beginning to be developed in the field.

Travel Budget: Enforcement

Question 4. For a nation-wide organization, a travel budget of one percent of total budget seems very modest. How much of this travel budget is for the Bureau of Enforcement and Investigation? Do you feel this amount is adequate?

Answer. The Travel budget for the Bureau of Investigation and Enforcement for fiscal year 1982 is $31,000. It is hoped that this amount will be sufficient to enable the Bureau to reach its goals and objectives for FY 1982.

A breakdown of the FY 1982 budget by Bureau, Office and Chairman follows:

Bureau/Office	Travel Budget
Formal Proceedings	
Office of the Chairman	$18,000
Office of the Commissioners	20,000
Office of the Secretary	---
Office of the General Counsel	5,000
Office of Administrative Law Judges	8,000
Office of Regulatory Policy and Planning	5,000
Office of Consumer Affairs	1,000
Office of Energy and Environmental Impact	2,000
Bureau of Agreements	3,000
Office of Director	1,000
Office of Carrier Relationships	---
Office of Conferences	---
Office of Shoreside Agreements	---
Office of Economic Analysis	2,000
Office of Trade Review	---
Bureau of Tariffs	2,000
Office of Director	1,000
Office of Foreign Tariffs	1,000
Office of Domestic Tariffs	---
Office of Financial Analysis	---
Office of Special Projects	---
Office of Informal Dockets	---
Bureau of Certification and Licensing	1,000
Office of Director	1,000
Office of Vessel Certification	---
Office of Freight Forwarders	---

Bureau/Office	Travel Budget
Bureau of Investigation and Enforcement	$31,000
Field Offices	42,000
Atlantic District	5,000
Mid-Atlantic District	4,000
Great Lakes District	6,000
Gulf District	13,000
Pacific District	11,000
Puerto Rico District	3,000
Hawaii District	---
Administration	13,000
Office of Managing Director	8,000
Office of Personnel Management	2,000
Office of Budget and Financial Management	---
Office of Management Evaluation and Review	3,000
Office of Data Systems	---
Office of Administrative Services	---
TOTAL	$151,000

Our original request to OMB was for $180,000; this was reduced to $178,000 and subsequently to $151,000 (a 15% reduction).

Position Savings

Question 5. Public Law 96-325 exempts all collectively-bargained maritime labor agreements from the Commission's jurisdiction. How many personnel positions will this eliminate?

Answer. P. L. 96-325 has not resulted in significantly reduced workloads nor will it result in the elimination of any positions, since the Commission had already adopted a rule exempting collective bargaining agreements from the filing and approval requirements of section 15, Shipping Act, 1916 (46 C.F.R. 530), prior to the bill's enactment.

The Maritime Labor Agreements Act of 1980 (H.R. 6613) was introduced on February 26, 1980. Hearings on the matter were held on March 11, 1980, by the Subcommittee on Merchant Marine of the House Committee on Merchant Marine and Fisheries and on June 4, 1980, by the Subcommittee on Merchant Marine and Tourism of the Senate Committee on Commerce, Science and Transportation. Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office reviewed H.R. 6613 and advised, under letter of June 25, 1980, to the Chairman of the Senate Committee on Commerce, Science and Transportation (Attachment A) that:

> The decreased filing requirements for collective bargaining agreements are not expected to result in any significant workload decrease for the Federal Maritime Commission. Therefore, no significant savings will be realized by the federal government if this bill is enacted.

SUBCOMMITTEE RECESS

Senator WEICKER. The subcommittee will recess until 9:30 on Monday, the first.

[Whereupon, at 10:35 a.m., Wednesday, April 29, the subcommittee was recessed, to reconvene at 9:30 a.m., Monday, May 1.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

FRIDAY, MAY 1, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room S-146, the Capitol, Hon. Lowell P. Weicker (chairman) presiding.

Present: Senators Weicker, Rudman, Hollings, DeConcini, and Bumpers.

DEPARTMENT OF STATE

STATEMENT OF THE HON. ALEXANDER M. HAIG, JR., SECRETARY OF STATE

OVERVIEW OF BUDGET REQUEST

Senator WEICKER. The subcommittee will come to order.

The first witness today is the Secretary of State, Alexander M. Haig, Jr., who is appearing on behalf of the request of the Department of State and will give us an overview of their budget.

Mr. Secretary, nice to have you with us.

Secretary HAIG. Thank you, Mr. Chairman. If I may, I will make a brief formal opening statement to make for the record.

Senator WEICKER. Please go ahead.

Secretary HAIG. Mr. Chairman and members of the committee, it is a great honor for me to appear before this committee today. In testimony last month I outlined the international challenges we face today and the resources we seek to deal with those challenges. One of those resources—the State Department itself—is the subject of my testimony today.

The Department's appropriations request for fiscal year 1982 is $1.9 billion. To put this figure into perspective, I would like to say a few words about the real resources this money supports: The Foreign Service Officers and the State Department employees.

The promise of a consistent, reliable, balanced foreign policy can be fulfilled only if the foreign policy professionals make their proper contribution. They are the custodians of the historical memory of our actions abroad and a crucial asset for the years to come. As dramatic events in Iran and elsewhere have demonstrated, they have become the first line of defense of our interests.

In recent years the task of the foreign policy professional has become much more difficult. Several problems deserve particular attention: a tendency to ignore professional advice in policymaking; the financial drawbacks of public service; a growing volume of work without a commensurate increase of personnel; the frustration growing from the lack of a cohesive American leadership in the world. Above all, the profession has become much more dangerous. As violence has mounted against our posts abroad, Foreign Service employees have been forced to accept extended separations from their families rather than put their loved ones at risk.

As Secretary of State, I will seek to alleviate these conditions: to improve the morale of our professionals, to give them their necessary participation in the making and execution of foreign policy, to enhance their working conditions, and to protect them. The President has taken the most essential step in this process by giving his personal attention to the safety of our diplomats.

The budget request placed before you reflects a program designed to deal with security of personnel, working conditions and pay. It is fully responsive to the philosophy of management outlined above.

Security at posts abroad should be increased to protect our people and their dependents from mob violence and terrorism. It is important, too, that we protect classified national security information from compromise. For this purpose, the Congress enacted a supplemental appropriation of $6.1 million in 1980 and provided an additional $35.8 million in 1981. To continue with this critical security program, we are requesting another $25 million in 1982.

This appropriations request reflects a net reduction of 194 positions in 1982. However, we must cut deeper in order to accommodate necessary increases in several areas.

The provisions of the Foreign Service Act of 1980 on professional development require additional training, faculty, and support personnel.

The Department's capability to report and analyze political and economic events must be strengthened.

Under Secretary Kennedy, who is with me this morning on my left, is conducting an intensive review of our personnel resources.

Also, as part of the Foreign Service Act of 1980, we have initiated the pay comparability provisions for the Foreign Service. The new Foreign Service designations and grade levels are in effect, and we are requesting supplemental appropriations to cover certain new allowances for our employees abroad. When fully executed, Mr. Chairman, I believe the Foreign Service Act will provide a modern, simplified, and supportive personnel structure.

Another major component of the State Department's budget is U.S. contributions to international organizations. These assessed contributions are legally binding obligations. A reliable and consistent foreign policy, to which the President is committed, requires that the United States fulfill its obligations. On this principle, I believe the administration and the Congress are united.

A final comment concerns the relationship between our resources and the Department's ability to conduct the foreign policy of the United States. Over the past several years, the Department's staff abroad has been seriously reduced. If we are to meet the complex challenges that confront us, then the Department of State must have the necessary resources to pursue our objectives. The 1982 request has already been pared to the minimum, as befits these austere times. For this reason, I am asking for your close support for the full amount specified.

Thank you very much, Mr. Chairman.

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

Senator WEICKER. Thank you very much, Mr. Secretary.

To start off on a specific question relating to the budget of your Department, you referred in your statement to the legally binding obligations we have to international organizations which you said the President is committed to fulfilling these obligations. What troubles me in your statement and the administration's actions toward the international organizations may not be perceived as being consistent.

Right now the administration is proposing a scheme under which we will be paying our dues to international organizations nearly 10 months into the year in which they are due. So for the next 4 years, we will be paying three rather than four quarters of our dues and will be accumulating savings. Frankly, the savings are being achieved with what looks like a bit of fiscal legerdemain. I realize the fiscal aspect of the administration's policy is not in your hands necessarily, but it may raise some serious questions with our allies. No other major developed country exercises this policy.

I would like to know what we can gain by delaying our payment of these obligations.

Secretary HAIG. Mr. Chairman, there are several advantages to this in that we will be delaying our payment to the last quarter. In the past we found ourselves prepaying with rather fuzzy estimates of what those costs would be and a recurring requirement to come up for supplementals because of misjudgments.

Now under this arrangement we think those requests for supplementals will not occur with the frequency they have in the past, if at all.

We do feel that this is a firm meeting of our commitments, recognizing that using that money for other purposes until the end of the year reaps a benefit for us. But I think the bookkeeping and the management of the system overall will be greatly strengthened by this new approach.

Senator WEICKER. We have been told that this deferral policy, for example, will have a substantial effect on the Organization of American States and other Latin American organizations. I wonder as to what kind of a signal we are sending to Latin America at a time when we are pouring millions of dollars of arms into El Salvador, as we move ourselves into the forum in which many of these problems can be resolved.

Secretary HAIG. I don't anticipate a departure from our traditional support to the OAS. I do think that it is awfully important that at this particular juncture in our history that we get our domestic fiscal house in order. Of course, this is one of the measures, of many, that were designed to do that. I do think those who participate with us in these organizations, where our historic generosity has been at the forefront of almost all of them, recognize we have been giving declining levels of support internationally in many of these organizations. But I think we can manage our way through this all right.

Senator WEICKER. Mr. Secretary, I don't disagree with the necessity to get our fiscal house in order. What I am saying is this is an Appropriations Committee and one that is involved in the fiscal process. This is not a conservative fiscal practice. Even I, who is not considered to be in the class of a conservative when it comes to fiscal policy in budgets, believe this is a contingent liability. You can't categorize it any other way. To move it off the books and give it the impression that it is not part of what we owe; unless people have the intention not to go ahead and fulfill it. I just think I put it in the category of a little slight of hand fiscally.

Now I give this message not so much to you as I do to those who prepare the budget, Mr. Stockman on out. I do not consider this any sort of a saving, even though that is the impression given when the figures are totaled. It is not policy decision to lessen our commitment to these various organizations.

I would like to move on, if I can. This is the opportunity the committee traditionally has had, to get into some of the broad policy aspects of your Department. I will ask several questions along that line. Then I will give each one of my colleagues the opportunity to do the same.

DEATH OF AMERICANS IN EL SALVADOR

What is the status and what are the preliminary findings of the investigations into the deaths of the four American missionaries and two American advisors in El Salvador? What action has been taken regarding the suspicious disappearance of Father Bourgeouse of Chicago, last seen in El Salvador on Sunday?

Secretary HAIG. Senator, it is clear that from the very outset of this situation with respect to the nuns, we have been in the closest liaison with the Duarte government in El Salvador. As you know, we have had the FBI down there working in coordination with their law enforcement agencies and government officials.

I said earlier this week that there has been some progress on this investigation. I think public disclosure of the character of that progress could put the investigation itself in jeopardy, so I will not do that today, other than to tell you that it has been a matter of primary attention to this administration, as it was to our predecessor.

Now with respect to the events over the weekend, there again we have been working actively since the event was reported to try to ascertain the facts to the best of our ability. These are very difficult problems, of course, because of the disarray and the attitudes of extremists on both the right and the left.

All I can say is that it is a matter of prime attention on my part, and I discussed the situation personally with President Duarte. He knows where we stand on this issue. I am very hopeful that it will be resolved, the more longstanding case, in the not-too-distant future. But there are still a number of uncertainties.

Senator WEICKER. Is there any report as to Father Bourgeouse?

Secretary HAIG. As of this morning we have nothing that is definite. I do not feel comfortable putting it in the public record.

INTERNAL SITUATION IN EL SALVADOR

Senator WEICKER. What are the prospects of a negotiated settlement in El Salvador? What steps has the administration taken to stimulate this process?

Secretary HAIG. Well, in the first place, I want to emphasize that we are strongly bound to a negotiated political settlement and not a settlement by force of arms. That has been the main anchor of our policy from the outset.

There are some difficulties with respect to certain of the current theories in favor of a political settlement—in other words, a compromise.

What President Duarte has sought to achieve is an early electoral process where several determinations would be the vehicle through which pluralistic outcomes would be achieved. One of the great problems associated with so-called compromise in political negotiations between parties that are in conflict is that it can create problems in its own right from either the right or the left of the extreme fringes. It is for that reason that we are basically comfortable with President Duarte's approach, which is to call for early action, to invite all of the parties to participate in these elections, and to have this outcome be a fundamental reflection of the will of the people of El Salvador, rather than a jerry-rigged imposed negotiation by elements which may or may not be a reflection of the true will of the people.

So we are pushing that particular course of action. We will be working on the weekend to expedite the conditions that will permit the election. One of the most important things as they return to normalcy is the internal situation. But we are far from out of the woods as the rebel activity continues.

Senator WEICKER. When do you foresee elections being called?

Secretary HAIG. The first target date was 1982, set out by President Duarte. He has telescoped that somewhat. I think this will be in large measure a reflection of the improvements in the internal security situation. As I say, there has been some improvement. We have seen a sharp departure from the normal routes of infiltration of arms and equipment to the rebel forces through Nicaragua via Cuba, Eastern Europe, Libya, and North Africa. This has not terminated. There have been other routes opened to compensate for more direct air routes that we witnessed before this current situation. There is some evidence that these new routes are again increasing in terms of the level of armaments being provided to the rebel forces.

But with respect to the insurgency itself, the insurgents are basically on the defensive today and the El Salvadoran armed forces are performing increasingly more efficiently. The Salvadorian armed forces have yet to really enjoy the benefits of the increased levels of U.S. military assistance, which will be about $35 million—roughly one-fourth of the developmental aid that we are providing.

Senator WEICKER. Mr. Secretary, I will ask one more series of questions and then I will open it up to questions from my colleagues.

Senator BUMPERS. Are you suggesting the others haven't been serious? [Laughter.] You have been wasting your time, Mr. Secretary. We have just been playing with you. [Laughter.]

Senator WEICKER. I have questioned the lack of a policy in the Caribbean, Central America, and South America. That brings me to my questions as they relate to Cuba.

I have long been an advocate for a constructive evolution in U.S. policy toward Cuba. In my view, the policy pursued by the last five administrations of diplomatic and economic isolation have been anachronistic and increasingly costly for U.S. taxpayers and U.S. interests.

The last 20 years of nonrecognition have produced a series of crises—from the missile crisis to the Soviet brigade to the Mariel boatlift—and this is the main point, only solidifying Soviet control both in Cuba and Soviet influence in this hemisphere.

My question to you is at what point does the dialog begin? Does the administration have any plans to review our relations with Cuba, given the importance of actions of the Castro government to U.S. interests in this hemisphere, and given the fact that two of our primary allies, Mexico and Canada, are actively engaged in various activities with Cuba? Mexico on the matter of energy; Canada in various matters of economic accommodation.

I again want to rephrase or repeat the question as to whether or not there would be a dialog and, if so, when it commences, and whether or not we would support expanded cultural and scientific exchanges, if indeed that is to be the first step between ourselves and Cuba.

I want to make certain the basis for the question, which is that the name-calling policy and the creation of a vacuum has only succeeded in putting the Soviet Union smack into our hemisphere, with its influences, be it anywhere in that hemisphere, in whatever form. I would like to know exactly what the administration's plans are in this regard.

Secretary HAIG. Mr. Chairman, clearly this is a long and hotly debated issue, in which there are strong arguments on both sides. One might even question, for example, the premise of your question, that in the initial period it was U.S. isolation that brought the Soviets in. One might suggest that the entry of Casto was a fulfillment of the Soviet objective in this first instance. There again history would have to define conflicting views.

I happen to feel that the entry of Soviet influence in Cuba was an operative objective and that Castro was a tool of that and has remained one.

Now one of the great problems today is that I don't think the United States historically or traditionally has been a power that has isolated itself from other powers that would dedicate themselves to moderation and to meeting halfway what has been a longstanding and very evident willingness of the United States to talk to anyone, anyplace, where the results would be greater stability and insurance of world peace.

In the case of Mr. Castro, he has been presiding over an economic shambles, a systematic failure of profound proportions within Cuba proper. He has been a tremendous liability to the Soviet Union itself in the context of the cost to the Soviets to support the Castro regime, its policies and, above all, its proxy activities worldwide.

Senator BUMPERS. Mr. Secretary, if I may interrupt, and if the chairman will permit, just how much is Castro costing the Soviet Union in dollars per day now?

Secretary HAIG. Well, we have had figures that run $8 to $10 million a day. Now I think those figures are modest because they are rarely consistent with the levels of support that we have provided before. There were 60,000 Cuban forces that were operating abroad. They are now clearly being sustained by Soviet resources.

Now the question at hand, Mr. Chairman, is we have seen since the Angola operation and the introduction of Cuban forces in Angola, Ethiopia, and other African areas of tension, a resumption of the level of subversive activity which closely parallels what we saw shortly after the Cuban missile crisis during the Kennedy administration, which by the work of the interdepartmental framework was designed to block that.

I think Mr. Castro has a choice to make. If he is going to persist in the provision of arms, terrorist training, strategizing for the forceful overthrow of existing regimes in this hemisphere and elsewhere, it is going to be extremely difficult, if not impossible, to initiate a dialog with him.

I personally think that were that anomaly to occur, that the benefits to the people of Cuba would be remarkable and astonishing in terms of technology, agriculture, medical, all of the kinds of things that adherence to Soviet alinement never brings with it. What you get from the Soviet Union is arms and strategy for the expansion of Soviet influence worldwide.

It is a great tragedy that the people of Cuba are saddled with this arrangement. I can assure you that this administration would welcome any opportunity to reverse that reality, but it must be preceded by some reining in, some indication that the leadership in Cuba is willing to abide by the rules of standard behavior in international law and by peaceful change and not by resorting to bloodshed and terrorism.

SOVIET INFLUENCE IN THE WESTERN HEMISPHERE

Senator WEICKER. Mr. Secretary, let me address myself to various parts of your comments and allow you to respond. Again I repeat that the fact is that the Soviet Union is smack in the middle of the Western Hemisphere, or in that area of the hemisphere.

Secretary HAIG. Yes, sir.

Senator WEICKER. That is a fact.

Secretary HAIG. Absolutely.

Senator WEICKER. My question is, how do we compete with them? To me competition is not sufficient in the sense of us saying we don't like Castro or we don't like these fellows that are on the other side of the Duarte government in El Salvador. I am asking how are we going to compete?

I couldn't agree with you more in that aspect of your statement when you said that what we have to offer in terms of medicine, education, and agriculture, et cetera, is far preferable than the export of arms from the Soviet Union. But we are not doing it.

If I could just continue for 1 minute, to assume that Cuba is isolated from the rest of the world insofar as the rest of the world supplying these things, Mr. Secretary, I was there 6 months ago. France is there. Great Britain is there. Spain is there. Japan is there. Not just the Soviet

Union. They are supplying this. The only country that isn't there is the United States.

Here we are as the leader, supposedly, of our own hemisphere. Canada and Mexico are there. Again, I don't disagree with the condemnation of a Soviet form of government or totalitarianism. That is fine. But how are we competing so we don't have to come in at the tail end with a brigade in El Salvador, and we are going to send a few advisors here and a few advisors there and a few arms here and a few arms there, when I think we can compete so effectively in terms of quality of life. But what is it we are waiting for; the government to collapse in Cuba? It is not going to collapse, Mr. Secretary. We have to deal with it, just as we have to deal with Mr. Brezhnev, whom we may not necessarily agree with, or what life in the Soviet Union is all about. But we have to deal with it in a real world.

Secretary HAIG. I don't think anybody questions the premise that we have to deal with these problems. But I would like to suggest to you that competing with these problems is a matter in which we are having increasing success.

We have no reason to be self-conscious or wring our hands about the realities of Soviet intervention in the Third World. What is occurring increasingly is a recognition by those states who have welcomed Soviet largess and influence that it brings with it nothing but bullets, increased Soviet influence, and ultimately a declining state relationship. Throughout Africa and the rest of the developing world, where Soviet presence has been brought in, there is an increasing restiveness and recognition that only the West, only the free democratic, industrialized societies have the assets that provide for nation building and the abililty to meet the aspirations that they seek.

Now I am very confident that the style of competing is moving in our direction. I am very confident of that. But I am also confident of this, Mr. Chairman, and that is that we can't be complacent about that reality, as certain members of the former administration would suggest. There are three reasons for that.

The first is that if we leave unchallenged blatant, illegal Soviet or proxy intervention in the internal affairs of developing states, we leave other states similarly threatened, with no alternative but to adjust their policies to what they assume to be the inevitable.

Second, and this is vitally important in this hemisphere and in Africa and in the Middle East as well: If one looks at the pattern of Soviet concentration in this developing caldron, one will note that this concentration is appearing increasingly in areas of strategic significance to the free world—lines of communication, the narrow straits and channels. And the Caribbean area is a crucial area in this respect, as is the Horn of Africa and Southern Yemen. So there is a second aspect of this question that suggests we must not ignore, despite the favorable trend.

And the third point is this: How can we hope to ever create a just and responsible relationship with Cuba or with the Soviet Union if we pursue policies that ignore blatant, illegal interventionism on their part? I would suggest that is a double standard that would snap back and put in jeopardy——

Senator WEICKER. Mr. Secretary, no one is suggesting that we ignore the Soviet threat. What I am suggesting is we compete with it, and we are not.

Now No. 1, I would suggest that you contact your own internal section and the Cuban section to find out how many signals Castro has sent this country in the last 2 years that some sort of dialog should begin. Those signals have been sent.

Secretary HAIG. I think I am aware of them.

U.S. TRAINING AND EDUCATION OF FUTURE THIRD WORLD LEADERS

Senator WEICKER. OK. To say they haven't been sent is not correct. Maybe they are not to your satisfaction, but they have been sent.

And point No. 2, when we talk about the Soviet role in the emerging Third World—and sections concerning the various aspects of our foreign policy have already appeared before our committee—I find that our efforts just in the area of education alone—I asked, for example, how many people do we have coming over under this budget of the administration in terms of exchange students from El Salvador? Seven. How many do we have from Namibia? Two.

I wonder, what is it we are doing? For example I visited Cuba and found one school where 600 Namibians were getting their education, courtesy of the Soviet Union, in Cuba—600—to go back there—now we are not talking arms—to go back to Namibia to be leaders of that nation. The United States, two.

Now this is what I am talking about, Mr. Secretary. Quite frankly I can see the necessity of arms in the world. But this is a battle for men's minds. We are not participating and we are not competing. I think it is up to you to defend now. If we are going to have a continuation of what the effect has been now of almost 20 years of name calling in the Caribbean vis-a-vis our relationship with Cuba, during which period of time the Soviet Union solidified its position in our area of influence in the world, then I think that is the policy you ought to be questioning, not a policy of dialog.

If you care to respond, fine. Otherwise I will start passing to other Senators.

Secretary HAIG. No, I don't want to be an apologizer for the failure of recent American budgets to increasingly cut down the bringing of foreign students into this country. I think we have the prime activator in the Department of State to increase in this area.

Senator WEICKER. We haven't. That is not what the budget says.

Secretary HAIG. Well, these are problems of many, many years standing, a steadily declining allocation in that area. I would include in there military training as well, because we have had great historic benefits from the training of——

Senator WEICKER. We certainly have, Mr. Secretary. When I was met at the airport by Fernandez, the Deputy Minister, we were both sort of reviewing each other's histories. We found out we both attended Fort Sill at the same time in 1953. Of course, he was the prime architect of the successful defense or repulse of the Bay of Pigs invasion. That is how successful we are.

Senator Hollings?

SECURITY OF AMERICAN EMBASSY PERSONNEL

Senator HOLLINGS. Mr. Secretary, you are right on target. Everyone agrees on those items of competition. Now we have a good Panamanian Treaty that is working, but we are not bringing Panamanian students to the United States. The future leadership of Panama is going to Cuba.

The chairman is on target about that part of the competition. But I think you are generally more on target around this town than some in the administration. That is what I would use my time of the committee hearing this morning for, a couple minutes, to reaffirm that.

You are catching hell from all sides, it appears to me. I think you are right on target. I think some people ought to understand and appreciate it and speak out on the matter of the security of personnel. I was glad to see you touch on that.

The fact of the matter is we started with SALT I and détente and then everything which disturbed the all-important relationship between the Soviets and United States was looked upon as provocative and destabilizing. We couldn't build an air strip. We couldn't receive Solzhenitsyn at the White House; we had to bring him to the Capitol. Ambassador Sullivan in Tehran was taken in the Embassy. That was in February. We cautioned then that security should be stepped up. Then when they took the hostages. When we would ask Secretary Vance about these matters, his reply was that would be provocative and destabilizing.

Now everybody says you are the fellow who is provocative and destabilizing about this town. A big change has come about. [Laughter.] But the fact of the matter is I am glad to see that we are going to build up the security, Mr. Secretary, of these particular Embassy posts. I know you have to rely ultimately on the other country's security personnel. You can't build fortress America in every country of the world. But we ought to have some stopgap measures, some time to secure our communications, secure equipment and correspondence and what have you. I understand you have requested an increase. Is that right?

Secretary HAIG. Yes, sir. We have requested $25 million for this purpose. That will continue with a program through 1985, which will enable us to enhance some 125 posts worldwide, at a total cost of about $187 million.

Senator HOLLINGS. I am also concerned that you coordinate with the FBI. In former times the FBI constantly would flag a particular application for a visa as a security risk. We all know the intelligence scheme. Some were let in anyway, even though they were a security risk. But others were known agents—convicted, ousted from other countries—and ready to come to the United States. The FBI says no; yet the State Department has come along over the years and said yes. They overruled the FBI many times because it would be provocative and destabilizing to deny the visa.

We think we got on top of that, but I am not quite sure. I hope you would check on that with Attorney General Smith and make certain, because if any come in and we try to keep track, that causes us—not for 24-hour surveillance, but not to lose them—12 agents. We only have

7,000 agents. In fact, they had cut into the FBI budget in the Budget Committee until Tuesday afternoon when we had another $100 million put back in.

The other matter goes just very briefly to the point on SALT II itself. Maybe it would serve some purpose, Mr. Secretary, if you could separate, having been the NATO commander, the talks on the mutual balance of force reduction, arms limitation, as compared to strategic. Necessarily, if I was the Soviet, I would try to restrict the development of technology in the United States, or at least its use, like cruise missiles, and wouldn't want to talk about the regular arms. I have the manpower and I have all the moneys in my kind of economy to support all the tanks and guns. There is never any hope of us competing on the basis of men and tanks and artillery pieces. Our only superiority, and hope for sustenance of superiority, is technology.

I think that is missed when they get a SALT II agreement that guarantees them a throw-weight advantage they can easily provide with 150 MX's, regardless of who went which way and all of that rationale, and counting our B–52's and not their Backfires, or counting our cruise missiles and limiting them and not their intermediate SS–16s, ballistic missiles, or their mobile missile system that they were given and we were denied, or the five new systems they were given and we were denied, or more than anything else the use of our technology—namely, the cruise missile. We can extend the firepower of our Navy and even the cost of the support of NATO and everything else, as you well know, with cruise missiles rather than with medium bombers and what have you. It is very obvious working in the field. But I think that the impression or perception is that we have now worked our way into the position of not wanting to talk at all, unless we start talking in a meaningful fashion on MBFR in Vienna which has been going on for 10 years. That is arms limitations. We never seem to emphasize that. They won't give us any count. We know we can verify those, the number of troops and tanks there, but they won't cut back. They are not going into Afghanistan with missiles or into Angola, Yemen, Cuba, or wherever else. They are marching in with American trucks and tanks and everything else of that kind.

I would hope that on the SALT II negotiations that will resume, at whatever time the administration thinks propitious, that in the meantime, with our allies, that sat there with us in Vienna on MBFR, we could proceed. And that would get the public's attention to the superior position that this administration and this country has taken over the years.

Is there anything we can do to help you, other than cut down on these hearings? [Laughter.]

STRATEGIC ARMS LIMITATION TALKS

Secretary Haig. Senator, needless to say, much of what you said I am both comfortable with and grateful for. Your comment on MBFR's notorious lack of success over some 7 years is becoming increasingly evident, but I think we must continue to try, and perhaps with greater vigor.

On SALT, I think we all recognize that the SALT II accords, which some seem to feel fell on the rocks of Afghanistan, but which I prefer to suggest fell on the rocks of its own inadequacies in the legislature, poses some fundamental challenges for us—challenges which are well understood. And we recognize the need to be sure our future negotiations with the Soviets, which we welcome and will continue to seek at the appropriate time, will clearly achieve what President Reagan wants.

That is not just specific limitations in functional areas of dubious value but genuine reduction in nuclear arms. That I think is the underlying aspect of President Reagan's overall objective.

I am not altogether discouraged by the prospects of moving out in that direction at the appropriate time.

Senator HOLLINGS. As a member of that legislature, you are dead on target. There is no question about it. It was there. It couldn't get the votes. We had head counts to show they couldn't; 40 or 50 Senators, for various reasons, were not going to support it. It wasn't Afghanistan. It was the inequity, the imbalance, plus all the lack of verification.

Thank you, Mr. Chairman.

Senator WEICKER. Thank you very much.

Senator Rudman?

PROTECTION OF AMERICAN EMBASSIES

Senator RUDMAN. Mr. Secretary, I have one brief question. Your statement addresses the matter of security, which Senator Hollings has also discussed with you. You put it into two categories: first, the category of protecting people; the other, of course, protecting vital national security information.

I assume it is still the State Department's position that there is probably no way that we can really protect our people, no matter how much money we spend, unless we have the cooperation of the host government. Is that so?

Secretary HAIG. Well, I think in general that is true. We can provide protection for a host of unpredictable and small threats to their personal security, whether it is terrorist or criminally motivated, but when a large concentration occurs, we either have the support and the cooperation of the host government or our ability internally to have the kind of security we would want would be limited.

Senator RUDMAN. Under those circumstances, in terms of money being spent in terms of protecting embassies, in terms of protecting people rather than information, handled differently, I suppose we will spend huge sums of money that will build the kind of protection that in no way will be able to resist the kinds of numbers that would accrue with the host government's lack of cooperation.

Secretary HAIG. No. We are not indulging in a bunker complex or maginot line complex in these more difficult and unsettled areas. We do feel, and it is necessary both with respect to the residences—we are looking at this because this is probably the most vulnerable area, where our people are separated and living in municipalities, to look at the advantages of greater concentration and minimum security, such as alarm systems and double locks for doors and perhaps private guards in particularly difficult areas.

In terms of our Embassies or official buildings themselves, here we do somewhat more primarily to insure that we have the time that is necessary to safeguard our classified information and, hopefully as well, to contact the host government and provide time for them to react to meet their obligations to provide for our security.

REVIEW OF SECURITY PROCEDURES

Senator RUDMAN. A last question, a very brief one, Mr. Secretary. Have you reviewed personally, or someone who you delegated to review personally since you have taken office, the problem of the very sensitive cryptography and other sensitive data, unfortunately some of which fell into the wrong hands in Tehran? Have you reviewed the procedures if those situations occur that we now have procedures and training so that this will not happen again?

Secretary HAIG. Yes, sir. This experience was a damaging one. I think we learned a great deal from it. The overall improvement programs derived from lessons there and Libya have caused us to seek greater computerization, microfilming of records, which lend themselves to the more rapid destruction, and a host of other related document protective initiatives.

Senator RUDMAN. Mr. Secretary, I thank you very much. I join in Senator Hollings' initial comments about what you are doing.

Secretary HAIG. Thank you, sir.

Senator WEICKER. Senator Bumpers?

INCREASE IN BUDGET REQUEST

Senator BUMPERS. Mr. Secretary, let me ask you, first of all, if David Stockman has been over to see you? According to Under Secretary Kennedy's testimony, which will follow yours, State is asking for $1,908,000,000, an increase of $317 million. How did you get that through Dave Stockman? [Laughter.]

Secretary HAIG. Well, I will admit it was a challenge, Senator. [Laughter.]

Senator BUMPERS. I am not squawking about it. I just want to know the secret. [Laughter.] That is about a 17-percent increase over last year.

Secretary HAIG. Yes. I think Mr. Stockman recognizes, and we, that the overall budget of the State Department compared to the budgets of our other, both domestic and foreign, activities has been very, very modest in its growth and lagged behind the increasing levels of responsibility worldwide. That not only involves our money, but it involves our people, where again this year we have taken a reduction. So I take my hat off to Mr. Stockman there.

You know, our embassies abroad have mushroomed. We have not had a mushroom in personnel. As communications, air traffic, what have you, have grown, our passport activity, visa activity have mushroomed worldwide. We today occupy roughly 20 percent of our embassies abroad with State Department personnel. The rest are other agencies in the Federal Government—Defense, Commerce, Trade, AID, and what have you.

This has been a great burden for us. It means that an increasing level of our money, our budget, has to go into not supporting State Department activities but the other activities of the Federal Government abroad. All of this has justified I think the increasing level of expenditures for the Department, especially if we are going to reverse the foreign policy lag we have been experiencing.

PROTECTION OF CLASSIFIED MATERIALS

Senator BUMPERS. You are asking for an additional $25 million to do what Senator Rudman just asked you about: to protect classified information in the embassies in case of an instance similar to that we experienced in Iran. I was just curious, did we fail in Iran because of lack of equipment or just lack of preparation to protect that kind of information in case of such an event?

Secretary HAIG. I would suggest that it was probably broader and more profound in political terms. I could take 15 minutes to even begin to focus on it.

Senator BUMPERS. Maybe it was a combination of both and some other factors, too.

Secretary HAIG. Yes. I think in the case of the loss of documents specifically that we had never been confronted with this kind of a thing, what I call a State-supported overrunning of an American facility, and that was a problem of unprecedented magnitude—we had a similar situation in Libya and perhaps Islamabad, although certainly less so.

There is no way of defending against that. Now what we have tried to do subsequently and learn is to utilize the advantages of the state of the art in maintenance of documents, like microfilming and compressing the volume of these things so they lend themselves to very rapid destruction.

Senator BUMPERS. Those are the kinds of things you intend to do with this $25 million?

Secretary HAIG. Yes, sir; and a host of other things, what I call delay mechanisms—phones on floors, for example, so mobs can't get in, and having alarm systems and warning systems.

Senator BUMPERS. To give you a little leadtime?

Secretary HAIG. Yes.

Senator BUMPERS. Mr. Secretary, let me ask you a couple of short questions about some of our property. In the negotiation of the release of the hostages, was there anything in that that dealt with our embassy property in Iran? If not, what is the status of that property? Is it just in limbo?

Secretary HAIG. It is in limbo at the moment. It is a matter which is not excluded from due process. It is an obligation that the Government of Iran must ultimately meet.

Senator BUMPERS. How much is it costing us to protect their property here on Massachusetts Avenue right now?

Secretary HAIG. I can't give you that.

Senator BUMPERS. We have 24-hour security there now?

Secretary HAIG. I don't know, sir.

Senator BUMPERS. Is it empty? It is not being used by anybody?

Secretary HAIG. It is empty. But I don't know what the costs are. Do you?

Mr. KENNEDY. We will have to supply that.

[The information follows:]

PROTECTION OF IRANIAN COMPOUND PROPERTY ON MASSACHUSETTS AVENUE

No guards are stationed on the Massachusetts Avenue property at the present time; however, members of the Executive Protective Service visit the property twice an hour on a daily basis at no cost to the State Department.

REPAYMENT FOR DAMAGE TO EMBASSY IN ISLAMABAD

Senator BUMPERS. A related question: We were promised repayment for the damage to our embassy in Islamabad. Has that been fulfilled?

Secretary HAIG. I think we have had some help, yes.

Senator BUMPERS. What was the damage, $25 to $35 million?

Mr. KENNEDY. I think it is in the range of about $20 million, sir, including $14 million for buildings.

Senator BUMPERS. Has there been any compensation paid yet?

Secretary HAIG. My understanding is that $14 million for buildings has already been compensated. I don't think we have had any compensation for the similar situation in Libya.

SOVIET GRAIN EMBARGO

Senator BUMPERS. Let me ask you a policy question. It has very little to do with the reason for your appearance here today. However, Senator Hollings raised the question, and I think you mentioned it this morning. It concerns this business of linkage which the Carter administration believed tied arms discussions to other Soviet actions. SALT II supposedly fell because of the American response to other matters dealing with Soviet behavior.

I am one who believes that if we are going to have linkage as an element in deciding whether or not we will engage in arms limitation talks with the Soviet Union, it ought also to apply to such things as trade as well.

Now I am not asking you to publicly disagree with your boss here this morning on the grain embargo. I have seen suggestions that you disagree with the lifting of the embargo. I do, too, very strongly. It is not an easy position for me because I come from a pretty strong agricultural State, and the grain embargo was not popular with the farmers of my State.

But I cannot for the life of me understand, No. 1, why we would lift it and give credence to this idea that we don't have the resolve or the tenacity to ever hang tough in our relations with the Soviet Union.

No. 2, despite what everybody is saying, I think the embargo is working and I think there was a serious protein, red meat shortage in the Soviet Union. It has been getting more critical—the very sort of thing that has caused untold problems for the Soviets in Poland.

Third, we seem to be saying on the one hand it hasn't worked, but if they invade Poland, we will reimpose it.

Finally, I don't see how the Congress can be asked to authorize an additional $62 billion for defense in 1982, reaching a total of I believe $290 billion in authority in 1984, in order to compete with the Soviet Union wherever we may have to compete with them militarily, and then turn around in the Senate and say we are going to send them something on the order of 25 to 30 million tons of wheat in 1981 to make up for two successive agricultural disasters they have had, so they would be healthy and strong if we had to fight them.

I just wondered, No. 1, if you had a chance to get your input into the decision on the lifting of the grain embargo.

Secretary HAIG. Yes, sir; and for a prolonged time. I think it goes without saying that this was a difficult decision for the President. Clearly it had to be made on questions that go beyond your farm policy, as important and critical as they are.

I would suggest that, Senator—incidentally, I want to clear for both the record and as a matter of conviction that I fully support the President's decision on this issue. But, you know, I think the President, recognizing that he, himself, had addressed this issue repeatedly in the campaign, that he believes it, above all his words and consistency and the liability of his position on fundamental issues, of overriding and paramount importance.

Second, that the whole panorama of the programs and objectives he is seeking here in the early days of his administration could have been influenced by this subject.

Third, that despite our best intentions, as you know, it was not a full embargo. We kept it at the levels of the 5-year agreement. It was really just a symbolic refusal to provide grain above those levels. So it was not a case of black and white as one might perceive it to be.

And the adherence by our allies to this was spotty. Some were very, very good in reacting to the Afghanistan issue. Some of them were less good. Some have been refining American purchased wheat and transshipping it to the Soviet Union. Some have been just involved in direct sales in high volumes. Others have been transshipping purchases from the United States.

Now over time that kind of situation, if the American farmer had to bear the burden alone, along with several other of our allies, it, itself, could have been a source of tension and disunity in the Atlantic Community of Nations.

Beyond that—I think this is the most important point of all—the President has always felt, and I frankly have shared that view, that agricultural sanctions alone are not the way to go about it. We had an experience with a similar situation in the early seventies when I was a member of the National Security Council Staff. On balance, we all concluded at the end we shot ourselves in the foot.

So what I suggest is and what I think the President feels very strongly about is that if it is necessary because of grievous aggravations of conduct of the Soviet Union, whether in Poland or elsewhere, if it is necessary to consider sanctions, that those sanctions should be approached on a broad front. They should involve everything from credit provisions to trade in commercial activities in a broader sense and not just single out the agricultural community here in America.

Senator BUMPERS. I am not saying I don't agree with that.

Secretary HAIG. Well, I am sure you do, Senator, and I think we all do. It doesn't alleviate some of the other arguments you pose.

Senator BUMPERS. It does not. Mr. Secretary, I don't want to belabor the point. It is done. I am not going to try to introduce legislation to undo it. There wouldn't be the votes here anyway.

It just seems to me like a gross contradiction to say we are going to deal with these people on their terms, and allow them to buy our grain or our technology and a range of other things. I am talking now about the grain embargo. I think they are suffering. I think we are going to alleviate the suffering. I think we are going to help them prop up a system that has been failing miserably, particularly in the field of agriculture. As I say, to ask us to authorize a $62 billion increase in defense spending for 1982 alone and turn right around and strengthen them and improve their diet just makes no sense to me.

Senator WEICKER. If the Senator will yield, I supported the position, Mr. Secretary, that you took initially on this. I would also concur with your comments relative to total embargo. As Fritz knows, that has been my position on this matter the last couple of years, ever since the invasion of Afghanistan.

But then the question I have to ask you is what is the difference between the fact of the invasion of Afghanistan and the prospect of Soviet interference in Poland? Invasion is a fact. It is there. It happened.

Secretary HAIG. Absolutely.

Senator WEICKER. It is there. I couldn't agree more. Let me say, I don't think we should lift the embargo. Quite frankly, realizing the manifest unfairness within our own Nation and coming from a non-agriculture but manufacturing State, I have long advocated the total embargo, including the goods we make in Connecticut, although that hasn't come to pass. All I am saying is I don't understand what has happened in the international scene to change the situation. The Soviets are still in Afghanistan. Maybe it is true we don't have as many citizens of Afghani background so we don't have the push there, but we have the Polish background citizens. The principle is the same.

Secretary HAIG. The principle is the same.

Senator WEICKER. That is what I don't understand.

Secretary HAIG. I just have to go back again to the President's initial views and his very strong conviction about a grain embargo per se and about, above all, the commitments he made to the American people as a condition for their support in the election. I think he felt very strongly about that.

EXPANSION OF EMBARGO

Senator HOLLINGS. One other thing too, Mr. Chairman, is it was working perhaps for the Soviets, but it didn't work with the U.S. Senate. Our argument is not with you but with each other. I happen to be with Senator Bumpers and voted for the continuation. But you and I were overruled. Twice the Senate has voted with Afghanistan still invaded, all of these things we are reminding the Secretary of. We ought to remind ourselves. But the vote was otherwise. Why don't you tell them you are just trying to get along with the Senate? [Laughter.]

Senator WEICKER. Senator DeConcini?

Senator DECONCINI. Mr. Secretary, let me add to what Senator Hollings said to begin with. I think that you made some strides that are very important in our foreign policy by some of your statements. I understand your position on the grain embargo. I happen to be with the four of us here—I have forgotten where Senator Rudman was on the issue—but thinking that with some of the statements you made, that I think are very proper, toward the Soviet Union, terrorism and what have you. It seems to me that the administration ought to have, and maybe it did—was there any consideration of not only keeping the grain embargo but expanding the embargo to technical and other trade areas? What was the discussion about that? What is your position on that?

Secretary HAIG. I think that was the basic issue, basic premise; was he going to be successfully able to achieve one or two alternatives, one of which was to broaden our approach. I don't think in political terms that was achievable beyond the limits we have already gone. And it would be unfair to suggest there haven't been some additional restraints in the wake of Afghanistan in technology transfer and a number of other areas. But I think that was the issue and it did not appear achievable in political terms. I don't think it would have been achievable as a collective effort among our community partners. Therefore, I think the President felt the time has come to get this thing done.

Senator DECONCINI. Excuse me, Mr. Secretary. Was there any effort or discussion with our community partners, our allies; that obviously from what the Japanese reported, at least the Washington paper reported, the Japanese were not consulted about lifting it. Were they consulted about expanding it?

Secretary HAIG. It depends on how you describe consultations. All of our colleagues were advised well before the fact of our intention to proceed. They had ample time to respond.

Senator DECONCINI. Did they agree for the most part?

Secretary HAIG. Well, I would say, you know, a question of this difficulty, there are very honestly held views in certain circles—some of which would be in Senator Bumpers' camp and others would say well, we are glad to have this behind us.

I think you could look at the past policies of the Government. I can't label particular ones. But there has been a mixed picture.

Senator DECONCINI. Was the Japanese reaction properly reported in the press here, that they felt they had not been given the proper input in the decision and consulted?

Secretary HAIG. This is a subjective judgment. They were notified and were notified in ample time. We didn't ask them to tell us how better to do it. So from that point of view, they could clearly suggest that maybe they would have preferred a little more give and take on the subject.

I must say the Japanese have been very, very good in abiding by the sanction efforts following Afghanistan, and they could only be given credit for that discipline.

HUMAN RIGHTS POLICY

Senator DECONCINI. Mr. Secretary, the President yesterday in ceremonies at the White House touched on human rights, realizing the audience and the circumstances there. He left a strong impression that there would always be on the bargaining table, as I understood it, remarks subject to human rights and it would be paramount in our foreign policy. Yet Secretary Weinberger recently indicated that excessive and public emphasis on human rights consideration is counterproductive.

What is your view? How important is human rights in our negotiations today, whether on the table or off the table?

Secretary HAIG. First, Senator, let me suggest that what the President was really talking about yesterday has been consistent with what I fully endorse and support, and that is the subject of linkage he was talking about.

Overall behavior is an aspect that must influence progress, or a lack thereof, in any particular functional area. That is not inconsistent at all, in my view, with the comments of Secretary Weinberger and my own comments and the President's comments. That is that in the past—and this is not criticism of the issue of human rights in the principle and the fundamental objective; we have to always seek improvements in this area—but theological preoccupation with it, a creation of what I call a functional myopia about it, sometimes was counterproductive on this issue in recent past. We, for example, had a great tendency to bludgeon traditional friends about their human rights inadequacy. Now that is not a judgment that those inadequacies are acceptable. It is, rather, how you get improvement in correcting them.

Senator DECONCINI. Along that line, Mr. Secretary—and I can appreciate that because I think there were overexcesses with some of our own friends, indeed—but how do you be certain that your delegates around the world, when they are dealing with nations, if they are not bludgeoning them in the press, that in fact that is really the topic of fundamental discussion with our friends and allies? How do you satisfy yourself that so it is not on the front page, in fact it is never on the agenda as I interpret what the President and you say, that it is still a very fundamental and if not No. 1, close to it?

Secretary HAIG. It is an essential thread of the fabric of any country. It is an essential thread. But a fabric is a mosaic, and our policies must be dealt with in their totality.

Now the way it is accomplished most effectively—and we are talking bureaucractic tactics——

Senator DECONCINI. That is why I am interested in knowing. I can accept what you are trying to do, move it off the front page. What I want to know is how do you insure yourself, the commitments you made and the President made, that in fact it is——

Secretary HAIG. By an atmosphere of mutual confidence and trust between traditional friends and ourselves on this difficult issue. I can assure you in the brief period we have been in office I think we have accomplished more in this area with several notorious countries in the past that used to be bludgeoned in our headline than we did under the other solution. What does it mean? It means that our policy instructions do not ignore this.

Senator DECONCINI. Will that surface, you know, from Amnesty International or through documents released by the State Department or even these nations, because I think it is vital for this country and the people here to be satisfied—and I am willing to believe you and the President—that you are not putting that as a second priority by any means. But perhaps there is a little doubting Thomas in all of us. We would like to see the results—if not today, next year or sometime—that in fact there has been greater extension of humanity and human rights from some of our allies or friends that we have indeed put on the spot in the international media.

Secretary HAIG. Yes. And the very act of my giving you a report card on several troublesome areas would be a violation of the principle we are seeking to abide by. But I can assure you that we have had several very notable successes.

Senator DECONCINI. Would you have any objection to doing that sometime in a closed session so that some of us would be——

Secretary HAIG. No.

Senator DECONCINI. Thank you. We may ask the chairman to do that. I appreciate that offer. I am not trying to expose it. I am just trying to be satisfied, that indeed——

Secretary HAIG. I recognize these issues. Cycles are 4 years around here. Everybody comes in trying to prove how incompetent his predecessors were. The truth is always somewhere in between because there is a dialectic in the conduct of government and policy.

I gave a speech to the Trilateral Commission published in the New York Times on our basic position on human rights. I refer you to it. I don't think you will find that we are downgrading the principle. We are taking it hopefully off the frontline of the front pages of our press as a vehicle for bludgeoning traditional friends and those who share our values in other ways.

INTERNATIONAL NARCOTICS CONTROL

Senator DECONCINI. Then I subscribe, Mr. Secretary. I believe it is a proper way to move. I think what is always worrisome is how is it implemented and are you successful, because whether you are successful, on the front page at least you read about it, and to the chagrin of some of us, it is far more zealous than is necessary.

Mr. Secretary, turning to the area of international narcotics control, you have not yet made an appointment, I understand, of the Assistant Secretary of International Narcotics Control. When will that come about?

Secretary HAIG. We are just completing what I call our search. I may add that we have had more highly qualified candidates for this particular position than any vacancy ever to be filled, and certainly any in recent experience. I think we have now narrowed the search down to some exceptionally well qualified people. I would anticipate that decision within the next week.

Senator DECONCINI. Do you anticipate keeping it as an Assistant Secretary position?

Secretary HAIG. Yes. I not only anticipate keeping it at that level, but I anticipate a major new thrust within the overall administration's approach to this issue in the near future.

Senator DECONCINI. When will you have that put together? After the person is on board to direct that?

Secretary HAIG. Yes. Of course, we are not in the State Department exclusively involved. We have DEA, Justice, Treasury, and a host of other agencies involved in this very important problem.

I wouldn't want to set a timetable because the timetable is less important than is the quality of the program we come up with.

Senator DECONCINI. Perhaps so, but let's turn just for a moment to the country of Colombia. We have had a program there, as I am sure you are aware, with the price tag of about $16 million. The best judgment I can make is it has been fairly successful. But there is need to expand it or at least continue it in a little bit different form. That has been explained to me by your designee, the President's designee, the Ambassador there.

I wonder if you have had a chance to focus in on that particular country, and what is the administration's projections or plans or proposals to continue here?

Secretary HAIG. We have continuing efforts not only in Colombia but in several other areas.

Senator DECONCINI. Are you requesting additional funds for the Colombia program?

Secretary HAIG. No. I don't think we are going beyond the levels we have right now. It is a straight line.

Senator DECONCINI. You are asking for another roughly $16 million then for continuation of the Colombia situation?

Secretary HAIG. Let me clarify this figure. In fiscal year 1980, $16 million was authorized and obligated for the Colombia program. This amount was reprogramed from funds made available in the fiscal year 1980 continuing resolution. The amounts planned for this country program in fiscal years 1981–82 are $3.6 million and $2.7 million, respectively. And incidentally, you raised a very important point on this subject. I have been involved in it intensely during my time in Europe because of the dreadful impact drugs had on our armed forces.

You are precisely right, it is never an issue where you can set up a firm set of policies and then continue to pursue them mindlessly, assuming you have found the Holy Grail, because every single posture you set up assumes certain things by the most ingenious of devices. So you constantly have to reassess. You constantly have to change it. This is clearly the case.

Senator DECONCINI. Right near there, Bolivia, do you have a contingency plan or are you working on a contingency plan, assuming that Government became cooperative in its curtailment of the shipment of cocaine and production of cocaine? Do you have a contingency plan or something for that country?

Secretary HAIG. We have been very actively engaged in this problem. We have had some results from that activity. There is a great deal more to be done. When you say a contingency plan, I think our most important thing——

Senator DECONCINI. There has been no major change in Bolivia as of today; is that correct?

Secretary HAIG. No, I wouldn't say that. I would say there has been a substantial improvement that would give us reason for greater optimism than we have had in the past. But it is not something that I would speak of publicly.

Senator DECONCINI. Thank you, Mr. Chairman. Thank you, Mr. Secretary.

PROPOSED ENHANCEMENT OF SAUDI F-15'S AND AWAC'S SALE

Senator WEICKER. Mr. Secretary, last Sunday Senator Baker announced that the administration had decided to defer submission to the Congress of its plan to sell F-15 armaments and AWAC's aircraft to Saudi Arabia.

Is that indeed the administration's intention?

Secretary HAIG. I think the President 2 weeks ago this past Monday, or 1 week ago this past Monday, made it clear that it is his intention to proceed both with the augmentation of the F-15 aircraft and the provision of the aerial surveillance AWAC's sale. I would like to emphasize that the modalities and the technical arrangements for this sale, especially the aerial surveillance area—I think almost uniquely in that area—have yet to be determined.

I think it awfully important for those that express sincerely held reservations about the wisdom of this to await our presentation of precisely what we are talking about, how it will be done, and all of the technical aspects of this proposed sale, and post-delivery arrangements as well.

I for one remain confident that when that occurs, that some of the recent opposition will dissipate, and I hope sufficiently to have a success.

Senator WEICKER. When do you expect to have that before the Congress?

Secretary HAIG. It is difficult for me to predict. We are working very carefully with our leadership here on the Hill. We intend to proceed in close consultation and concert, because after all, here is where the issue will be addressed and decided.

Senator WEICKER. Is it your expectation the issue will come before the Congress this year?

Secretary HAIG. I wouldn't even want to prejudge that. I do anticipate that.

RAPID DEPLOYMENT FORCE PLANNING

Senator WEICKER. Mr. Secretary, the Wall Street Journal reported today that the planning for the rapid deployment force will include intervention to deal with internal threats to friendly regimes. Would you care to comment on these reports which represent a significant departure from previous administration testimony before the Congress?

Secretary HAIG. I have some difficulty commenting on that because I haven't seen the report.

Senator WEICKER. Very briefly:

> Officials of the U.S. rapid deployment force confirm a long assumed, long denied belief: that it is planning for possible efforts to quell internal threats to friendly regimes, like those in Saudi Arabia and Oman. Carter administration officials insisted the only aim was to repeal outside—meaning Soviet—intervention.

Secretary HAIG. Mr. Chairman, it has been my experience that public officials who pop off in public about the intentions and contingency terms usually indulge in a sterile activity. I think a decision of that kind would be a decision made by the President in consultation with the appropriate bodies here on the Hill. You may have to face it along with the rest of us should the situation arise.

Senator WEICKER. I understand that. Have discussions of such a policy taken place?

Secretary HAIG. These have taken place traditionally. I can assure you that the fact of planning, contingency planning, sometimes thinking the unthinkable, is not a reflection of policy. I think you wouldn't want our planning to be so confined that we would be unable to deal with an unforeseen contingency, which might at some point justify the course of action you are talking about. But it should not be interpreted as a change of administration policy at this time.

Senator WEICKER. So you would categorize it only as one of many options discussed.

Secretary HAIG. I wouldn't even do that because that will get me farther than I want to go.

CONFLICT IN LEBANON

Senator WEICKER. Mr. Secretary, the broadening conflict in Lebanon is of great concern to the Congress. Can you discuss for the committee your evaluation of the present situation and the sanctions which the administration is prepared to take?

Secretary HAIG. I am sorry?

Senator WEICKER. I just want your evaluation of the situation and the steps that the administration is prepared to take in the matter of this conflict.

Secretary HAIG. Lebanon?

Senator WEICKER. That is right.

Secretary HAIG. First, let me say that the situation, at least in the very recent past, despite some ups and downs for a long period, has become somewhat more tangential because certain balances which have become almost a defacto aspect of a very complex internal situation have been exceeded.

We have been very actively engaged over the last 72 hours in a multitude of diplomatic initiatives with all of the parties to the conflict and all the parties that have a stake in it. That includes major Western Powers or Eastern Powers that have influence on the participants.

I would say the situation still looks very, very serious. There are grounds for optimism, not to say complacency, about the seriousness of this situation. I think at this point any public value judgments might even complicate the task we are involved in, so I will try to avoid them.

Senator WEICKER. Any initiatives on the part of this country have been strictly in the area of diplomatic initiatives. Would that be correct to say?

Secretary HAIG. Yes, sir.

LAW OF THE SEA

Senator WEICKER. One last question. I know you have a time limitation. I will allow each one of the Senators to ask one question.

My last question refers to the Law of Sea Conference. I, having been involved with it in the legislative sense, find it a little difficult to understand as to why all the people who have worked on that Conference were let go. I am wondering whether or not that action has sent a message to the world that the United States is no longer interested in the treaty.

Secretary HAIG. I think that would be an erroneous inference. It is not true that we have let everyone go. I am still utilizing Elliott Richardson who, as you know, has been a moving force in recent days in this.

Incidentally, this isn't an issue I am unfamiliar with. I recall drafting the terms of reference for our first negotiator on the Law of the Sea Conference some years ago. I think my colleague on my left participated as well.

I think a treaty of this magnitude, of this significance, and of this precedential nature, involving not only the seas but having a very important impact and influence on the ultimate resolution of similar questions in outer space. Yet the President felt he had an obligation to assure himself in great detail and with the utmost of care that all that has proceeded was in our judgment in the best interest of the United States.

I must add, Senator, we have had substantial support from other participants in the negotiations, that this was a wise and prudent reassessment that is now underway.

Now we should not prejudge what the outcome of that reassessment will be. I think the work of the groups in New York has not been set back. They have a great deal to do constructively before the next session, by which time I hope we will have definitized the American position.

Senator WEICKER. In conclusion, insofar as any observations of myself, I want to repeat, I want the Soviets out of this Western Hemisphere, Mr. Secretary. I don't think the way to accomplish that is of and by itself arms shipments in the last few minutes or the last act, regardless of what country we are talking about. It is an involvement by this Nation in this hemisphere.

I would hope that both in terms of our kind of action and a dialog and a competition—there is no competition right now—that that dialog would get going. Let me say this to you: I supported you in your position of the grain embargo. I realize now you are supporting the President. That is well and good. The fact that the President's position as stated during the campaign was part of the Republican Party platform to me still does not in any way justify the action that he has taken. I don't know if it makes any sense. I understood the principle which you think is correct. I don't care what the Republican Party platform said about Cuba. Believe me, that isn't going to get us in the position where we get the Soviets out of here. It is a continuation of what I call a name-calling policy. I would hope that be it any other nation in this hemisphere, we do involve ourselves to the point where we preempt the Soviets taking advantage of a situation in that nation to enter into what in effect is a change in its form of government.

Senator Rudman?

Senator RUDMAN. I have no further questions. Thank you for being here, Mr. Secretary.

Senator WEICKER. Senator DeConcini?

RAPID DEPLOYMENT FORCE AND SAUDI ARABIA

Senator DECONCINI. Mr. Chairman, if I could, let me ask one question that concerns me. The rapid deployment force that is in the process of being put together with various options, including options in the Persian Gulf and that part of the world, is something that I am glad this country is proceeding with. Then we come along with the administration's proposal on AWAC's and F-15's to Saudi Arabia. What I would like to know, Mr. Secretary, is if the negotiations are on the AWAC's and the F-15's to Saudi Arabia, has there been or will there be a discussion of a land base in the peninsula there, in Saudi Arabia, as part of this exchange or supplemental to the weapon sale?

Secretary HAIG. Senator, let me answer your question. At this juncture we have no strategic imperative for such a base in Saudi Arabia. We have been involved in discussions with other states in the area and discussions have been very successful.

There are other aspects of our relationship with Saudi Arabia, however, that would be perhaps somewhat more important. In this area, I can assure you that we have had both cooperation and substantial success. Unfortunately, it doesn't lend itself to public discussion.

Senator DECONCINI. Can I draw the conclusion from this meeting today that that is not part of the negotiations or the sale or contingency on any of the AWACs or other sophisticated weapons that at some time are going to be proposed by the administration?

Secretary HAIG. No. I don't know whether the previous administration indulged in such discussions, but we have not.

Senator DECONCINI. Thank you, Mr. Chairman. Thank you, Mr. Secretary.

Senator WEICKER. Thank you very much, Mr. Secretary.

Secretary HAIG. Thank you, Mr. Chairman.

ADMINISTRATION OF FOREIGN AFFAIRS

STATEMENT OF RICHARD T. KENNEDY, UNDER SECRETARY OF STATE FOR MANAGEMENT

ACCOMPANIED BY:

ROGER B. FELDMAN, COMPTROLLER OF THE DEPARTMENT

DIEGO C. ASENCIO, ASSISTANT SECRETARY OF STATE FOR CONSULAR AFFAIRS

THOMAS M. TRACY, ASSISTANT SECRETARY OF STATE FOR ADMINISTRATION

WILLIAM L. SLAYTON, DEPUTY ASSISTANT SECRETARY FOR FOREIGN BUILDINGS

BUDGET REQUEST

Senator WEICKER. Our next request is that of the Department of State, Administration of Foreign Affairs.

The amount requested is $1,318,754,000, an increase of $270,709,000 over the 1981 adjusted base. It provides for 15,831 permanent positions and funds to conduct basic domestic and overseas diplomatic and consular operations. Of the requested increase, $131,103,000 is the mandatory increase over which the Department has no control. Most of the remaining increase is primarily for FBO projects: Riyadh, $77.6 million; Cairo, $30 million; Moscow, $19.7 million; and Georgetown, $6.5 million.

Appearing on behalf of this request is Richard T. Kennedy, Under Secretary of State for Management, accompanied by Roger B. Feldman, Comptroller of the Department; Diego C. Asencio, Assistant Secretary of State for Consular Affairs; Thomas M. Tracy, Assistant Secretary of State for Administration; and William L. Slayton, Deputy Assistant Secretary for Foreign Buildings.

PREPARED STATEMENT

Mr. Kennedy, we would be pleased to hear your statement with regard to the request. Your statement in its entirety will be put into the record at this point. If you care to, you can either read or synopsize it.

[The statement follows:]

STATEMENT OF RICHARD T. KENNEDY

It is a pleasure to appear before you and the Committee today to present the Department of State's appropriation request, the one before you, for FY 1982. This request reflects the most recent budget decisions made to pursue the fiscal constraint mandated by President Reagan. The funds and positions requested are essential for the attainment of our foreign policy objectives and represent our best judgements regarding the most prudent use of resources in pursuit of these objectives.

Total Budget Request

For FY 1982, the Department is requesting appropriations totalling $1,908,768,000. This represents an increase of $317,138,000 over the FY 1981 appropriations to date after adjusting for $26,922,000 for net supplemental appropriations and budget reductions.

FY 1981 Appropriation Adjustments

The adjustments of $26,922,000 to our FY 1981 budget contain two primary components.

-- First, we are requesting 1981 supplemental appropriations totalling $58.1 million. Of this amount:

.. $17.8 million will cover the costs of the October 1980 Federal salary increases.

.. $27.7 million is requested in the Salaries and Expenses appropriation -- $13.7 million to offset unbudgeted overseas wage and price inflation and $14.0 million to implement certain pay and allowance provisions of the Foreign Service Act of 1980.

.. $12.3 million is requested for an additional payment to the Foreign Service Retirement and Disability Fund for the annual installment of the unfunded liabilities resulting from the Federal salary increases of October 1980 ($7.2 million) and the Foreign Service Act of 1980 ($5.1 million).

.. The remaining $275,000 is for mandatory increases in salaries and benefits of the Americans employed by the American Institute in Taiwan in parallel with the October 1980 salary increases and the Foreign Service Act of 1980.

-- Second, these FY 1981 supplemental appropriations are partially offset by $31.2 million in reductions against four appropriations pursuant to P.L. 96-536:

. -$3.0 million from transportation and equipment costs in Salaries and Expenses;

. -$4.3 million from deferring two projects in the regular Acquisition, Operation, and Maintenance of Buildings Abroad appropriation;

. -$2.7 million from deferring one project in the Acquisition, Operation, and Maintenance of Buildings Abroad (Special Foreign Currency) appropriation; and,

. -$21.2 million from deferral in payment of U.S. assessed contributions to 17 International Organizations.

As you are aware, during the House Appropriations Subcommittee's markup of this supplemental request, two major changes were made.

-- First, the Subcommittee rescinded $84 million in FY 1981 for Contributions to International Organizations which will advance by a year the planned four year deferral process by which we will pay our assessments to certain international organizations in the last quarter of the calendar year. The Administration is not appealing this rescission.

-- Second, the Subcommittee eliminated $3.8 million needed this fiscal year to implement certain allowances and benefits authorized by the Foreign Service Act of 1980 and prior legislation. We believe that implementation of these provisions should not be delayed until FY 1982, and therefore we are appealing this reduction.

Major Components of FY 1982 Increases and Decreases

Taking these adjustments into account, as indicated, the FY 1982 request provides a net increase of $317.1 million and a decrease of 194 positions compared with the FY 1981 adjusted appropriations.

Specifically, there are eight major components which comprise nearly all of the Department's total increases for FY 1982:

-- $73.2 million is requested as a net increase for the Salaries and Expenses appropriation. This increase is primarily to: (1) cover uncontrollable overseas wage and price inflation; (2) meet increased mandatory passport and consular workloads; and (3) offset continuing cost increases for domestic activities.

-- A net increase of $123.9 million is proposed for the regular Foreign Buildings appropriation and $37.3 million in the Special Foreign Currency Buildings appropriation. These funds will be used to: (1) complete construction of the Moscow project; (2) fund fully a new office and residential complex in Riyadh, Saudi Arabia; (3) construct office buildings in Cairo, Egypt, and Georgetown, Guyana; (4) complete staff apartments in Tokyo and New Delhi; and (5) cover overseas wage and price inflation. These figures reflect a budget amendment requesting transfer of $30 million from the Special Foreign Currency appropriation to the regular dollar Foreign Buildings appropriation for contruction of the Cairo office building. This amendment is necessitated by a recent review which reveals that there will be insufficient Egyptian Pounds to fund the entire project.

-- An $18.6 million increase in the Payment to the Foreign Service Retirement and Disability Fund is requested to meet mandatory requirements for the balance of the unfunded normal cost.

-- $20 million is proposed for a new Buying Power Maintenance appropriation. It will provide stand-by authority for the Department to maintain appoved levels of operations in 16 countries in the case of foreign exchange fluctuation losses or unbudgeted mandatory wage and price increases overseas. Similarly, deposits will be made to the appropriation from surpluses arising from foreign exchange gains or lessened overseas inflation in the covered countries.

-- An increase of $34.6 million is requested for Contributions to International Organizations for increased U.S. assessments to international organizations. The request also reflects the deferral until fiscal year 1983 of one quarter of the calendar year 1982 assessments to certain international organizations.

This deferral is the first stage of a four year process whereby the United States will be able to estimate more accurately future year budget requirements, since our appropriations request will be made after the budgets for those international organizations have been adopted. Under the proposed change in procedure, the United States will ultimately pay certain full annual assessed contributions in the fourth quarter of the calendar year, which is the first quarter of our subsequent fiscal year. Over the next four years, about $600 million will be deferred, of which $160 million will be in fiscal year 1982.

-- An increase of $10.9 million is for our Contributions for International Peacekeeping Activities resulting from the United Nations General Assembly raising the reimbursement level to those nations contributing troops to the United Nations Disengagement Observer Force on the Golan Heights and the United Nations Interim Force in Lebanon.

-- And finally, an increase of $2.3 million is requested for the U.S. Bilateral Science and Technology Agreements to provide for our share of a new Bilateral Science and Technology Agreement between the U.S. and Poland, and to continue the agreement with Yugoslavia.

These increases are partially offset, primarily, by two decreases. In the construction account of the International Boundary and Water Commission, $4.6 million is reduced primarily for non-recurring costs associated with the Amistad Dam power plant on the Rio Grande River. Also, $4.1 million is cut because the Department is not funding the core grant to The Asia Foundation.

Position and Resource Management

Mr. Chairman, I would now like to turn to our request for positions and several resource management issues. The 16,178 positions funded by the fiscal year 1982 request reflect a net reduction of 194 positions compared with the current fiscal year.

We are abolishing a total of 304 positions comprised of:

-- 22 positions saved as the result of the automated passport Travel Document Issuance System, now being installed in Los Angeles and Chicago;

-- 16 positions reduced in the Special Personnel Complement;

-- 10 positions abolished at the International Boundary and Water Commission; and

-- 256 position reductions which are yet to be determined.

Partially offsetting these reductions are requirements for 110 new positions for mandatory overseas consular and domestic passport workloads, which continue to grow at double-digit rates beyond our productivity gains.

However, we will have to make further position changes in order to enhance staffing in two other vital areas:

-- First, to fulfill the provisions of the Foreign Service Act of 1980, which requires greater efforts for professional development, we must provide additional positions for training, faculty and support personnel. Our new career development plan calls for increased training at crucial points in an employee's career. Foreign Service officers will receive training at three career levels -- upon entry, at mid career, and at the senior threshold. Additional training for civil service employees will also be provided at all levels. The Foreign Service Institute will complete its course development for these needs in 1981.

-- Second, we are committed to strengthening the substantive reporting and analysis capability of the Department, which was weakened during the last decade as requirements increased in other areas without commensurate position increases. We began the process of redressing this decline in 1980, with the endorsement and encouragement of the Congress. In 1981 and 1982, we have targeted additional positions for expanded reporting and analysis in countries of vital interest to the United States. Principal policy-makers of the Government will benefit from this in-depth reporting and will, as a result, be better equipped to formulate and implement U.S. foreign policy.

We believe that professional development and the substantive program expansion in reporting and analysis are of such high priority that we will have to reprogram positions as necessary to implement these efforts.

Overall, we have begun an intensive review of staffing Department-wide. When we determine where to reduce the 256 unspecified positions and how to strengthen our professional development and substantive analysis efforts, we will notify the Committee accordingly.

At this point, permit me to take a few moments to present a picture of the Department of State population overseas.

In regard to the Department's basic ability to conduct the foreign policy of the United States, over the past several years the Department's staff abroad has been seriously reduced while the presence of other agencies has grown. Indeed, with the reduction of almost 200 positions, our Salaries and Expenses appropriation alone has had a net decrease of over 2,000 positions since 1967 amounting to 11 percent, despite many new and expanding requirements -- particularly in consular activities. This shift has reached the point where Department employees now constitute less than 20% of the average U.S. Embassy, and approximately 25% of the Department's resources abroad are now used to support the activities of other agencies. If we are to meet the complex challenges in the current foreign policy environment, the Department of State must have the necessary resources to pursue our world-wide objectives. We believe that the 1982 request is the minimum essential level needed to carry out our mandated functions.

Foreign Service Act

Mr. Chairman, in addition to my earlier reference to the Foreign Service Act of 1980 in relation to professional development, I would like to add a brief description concerning overall implementation of the Act. Several major steps have been taken:

-- Pay comparability for the Foreign Service was implemented on October 5, 1980;

-- New Foreign Service designations and grade levels became effective February 15 of this year; and

-- The Department is requesting supplemental appropriations to cover the new allowances authorized by the Act to enhance the conditions of service for our employees abroad.

We are also moving ahead with the development of new Foreign Service regulatory provisions through inter-agency and labor/management negotiations. All of these initiatives will help insure that the principal objectives of the Act are met.

Embassy Security Enhancement

With the continued support of this Committee, we intend to pursue vigorously the enhancement of security at our overseas posts. As you know, the objective of this program is to protect our staffs from mob violence and terrorism, and to safeguard national security information. In 1980, the Congress enacted a supplemental appropriation of $6,100,000 and appropriated $35,800,000 for 1981. For 1982, $25,000,000 will be required for 14 additional post programs to be initiated and to continue projects already begun.

The Department has conducted comprehensive surveys at 20 of our most seriously threatened posts, and another 25 will be surveyed by the end of this calendar year. We are about to embark on construction projects at five of the highest threat posts. In addition, we have funded priority individual security requirements at some 79 posts since September 1980. By the end of 1985, we expect to complete the necessary improvements at approximately 125 posts. The Secretary and I are fully behind this security effort and will ensure that improvements are implemented as rapidly as possible.

Salaries and Expenses Overview

Mr. Chairman, turning to the major part of the FY 1982 budget, the Salaries and Expenses appropriation, I would like to discuss certain portions of this request. This appropriation comprises almost half of the total of all appropriations presented. Over 53 percent of these funds are used to pay the salaries and benefit costs of our American and Foreign National employees. The remaining 47 percent is used for operating expenses, such as offices, housing, communications, and administrative support incident to the Department's conduct of U.S. foreign policy activities.

To provide further perspective on the Salaries and Expenses appropriation, I would like to reemphasize that with the net reduction of 184 positions for 1982, our staffing will be about eleven percent lower than 1967 on a comparable basis, despite increasing diplomatic and consular workload responsibilities. Also, on a constant dollar basis, this appropriation will be at about the same level as it was in 1976.

The amount requested for Salaries and Expenses for FY 1982 is $928,258,000, a net increase of $73,224,000 over the FY 1981 adjusted appropriation. This represents a total increase of $87.4 million, partially offset by decreases of $14.1 million.

Of the $73.2 million net increase, $72.7 million, or 99 percent, stems from mandatory costs over which the Department has no control under existing law; the primary cause is overseas wage and price inflation. The remaining $534,000 will be used for research contracts which are tailored to intelligence needs for long range policy assessments and to update the computer software for the Automated Visa Look-out System in the Visa Office.

The decreases of $14.1 million include $10.8 million for non-recurring costs of our Embassy security enhancement program and $3 million for 38 specified and 256 unspecified personnel reductions.

Mr. Chairman, the appropriation request before you has been carefully balanced between constrained resources and the Administration's foreign policy objectives. Even within the present stringent budgetary environment, we have made every effort to assure that sufficient resources are available for the United States to continue its role in the conduct of foreign relations.

This concludes my prepared statement, Mr. Chairman. Mr. Roger Feldman, Comptroller of the Department, and Mr. Lorin Jurvis, Director of the Office of Budget and Planning, are with me today to address our appropriations requirements. We will be glad to answer any questions you and the members of the Subcommittee may have.

Thank you, Mr. Chairman.

FOREIGN POLICY OBJECTIVES

Mr. KENNEDY. Let me just give a brief summary of it, Mr. Chairman. I will submit the long statement.

Mr. Chairman, Senator Rudman, it is a pleasure to be here before you today and to present the Department's appropriation request for 1982. The funds and positions requested are essential, as the Secretary noted, for the attainment of our foreign policy objectives and represent our best judgments regarding the most prudent use of resources in pursuit of those objectives, even in this time of austerity.

For 1982, the Department is requesting appropriations totaling $1.9 billion. This represents an increase of $317.1 million over the 1981 appropriations to date, after adjusting for $26 million, which are net supplemental appropriations and budget reductions in our 1981 appropriations.

The adjustments of $26,922,000 to our 1981 budget contain two primary components. First, we are requesting 1981 supplemental appropriations totaling $58.1 million. Of this amount:

$17.8 million will cover the costs of the October 1980 Federal salary increase.

$27.7 million is requested in the salaries and expenses appropriation to offset unbudgeted overseas wage and price inflation and to implement certain pay and allowance provisions of the Foreign Service Act of 1980, which came into effect on February 15.

$12.3 million is requested to cover unfunded liabilities in the Foreign Service retirement and disability fund resulting from the Federal salary increase and the Foreign Service Act of 1980.

The remaining $275,000 is for mandatory increases in salaries and benefits of the Americans employed by the American Institute in Taiwan in parallel with the October 1980 salary increases and the Foreign Service Act of 1980.

Second, these 1981 supplemental appropriations are partially offset by $31.2 million in reductions against four appropriations pursuant to Public Law 96–536. This includes:

$3 million reduced from transportation and equipment costs in salaries and expenses;

$7 million from deferring three projects in the two foreign buildings appropriations; and

$21.2 million from deferral in payment of U.S. assessed contributions to 17 international organizations.

As you are aware, during the House Appropriations Subcommittee's markup of this supplemental request, two major changes were made.

First, the subcommittee rescinded $84 million in fiscal year 1981 for contributions to international organizations, which will advance by a year our planned 4-year deferral process—a matter you discussed earlier, Mr. Chairman, with Secretary Haig. The administration, I should note, does not intend to appeal that rescission.

Second, the subcommittee eliminated $3.8 million needed this fiscal year to implement certain allowances and benefits authorized by the Foreign Service Act of 1980 and prior legislation. We believe that implementation of these provisions should not be delayed until fiscal year 1982, and therefore we are appealing this reduction.

Taking these adjustments into account, the fiscal year 1982 request provides a net increase of $317.1 million and a decrease of 194 positions, as compared with the fiscal year 1981 adjusted appropriations. Specifically, there are eight major components which comprise nearly all of the Department's increases for fiscal year 1982:

$73.2 million is requested as a net increase in the salaries and expenses appropriation to cover uncontrollable overseas wage and price inflation, meet increased mandatory passport and consular workloads, and offset continuing cost increases for domestic activities.

A net increase of $161.2 million is proposed for the two foreign buildings appropriations to complete construction of the Moscow project, fully fund to completion a new office and residential complex in Riyadh, Saudi Arabia; construct office buildings in Cairo, Egypt, and Georgetown, Guyana; complete staff apartments in Tokyo and New Delhi; and cover overseas wage and price inflation. These figures reflect a budget amendment requesting transfer of $30 million from the special foreign currency appropriation to the regular dollar foreign buildings appropriation for construction of the Cairo office building, simply because there will be insufficient Egyptian funds to fund the project.

$18.6 million in the payment to the Foreign Service retirement and disability fund is needed to meet mandatory requirements for the balance of the unfunded normal cost of that appropriation.

$20 million is a new request that is proposed for buying power maintenance appropriation.

$10.9 million is required for our contributions for international peacekeeping activities resulting from the U.N. decision to raise the reimbursement level for the peacekeeping forces on the Golan Heights and in Lebanon.

$2.3 million is requested for our share of a new bilateral science and technology agreement between the United States and Poland and continuation of a similar agreement with Yugoslavia.

These increases are partially offset primarily by two decreases: $4.6 million is reduced primarily for nonrecurring costs associated with the Amistad Dam powerplant project, and $4.1 million is cut because the Department is not funding the core grant to the Asia Foundation.

Mr. Chairman, I would now like to turn to our request for positions and several resource management issues. The 16,178 positions funded by the fiscal year 1982 request reflect a net reduction of 194 positions compared to the current fiscal year.

We are abolishing a total of 304 positions, composed of 22 saved as the result of the automated passport travel document issuance system, 16 reduced in the special personnel complement, 10 abolished at the International Boundary and Water Commission, and 256 position reductions which are yet to be determined. We are working on precisely where those reductions should occur.

Partially offsetting these reductions are requirements for 110 new positions for mandatory overseas consular and domestic passport workloads, which are continuing to grow at double-digit rates beyond our productivity gains that we have been able to achieve.

However, as the Secretary just mentioned, we will have to go beyond these changes in order to enhance staffing in two other vital areas.

We want to fulfill completely the provisions of the Foreign Service Act of 1980. To do that, we must provide additional positions for training, faculty and support personnel. Our new professional development program calls for increased training for Foreign Service Officers upon entry into the Service, at midcareer, and at the senior threshold, as well as additional training at all levels for civil service employees. We are committed to doing that.

Second, we are also committed to strengthening the substantive reporting and analysis capability of the Department which was weakened during the last decade as requirements increased in other areas without commensurate position increases for the Department. In 1981 and 1982, we have targeted additional positions for expanded reporting and analysis in countries of vital interest to the United States Principal policymakers of the Government will benefit, we hope, from more indepth reporting and will, as a result, be better equipped to formulate and implement U.S. foreign policy.

Overall, we have begun an intensive review of staffing departmentwide. The purpose is to determine where to reduce the 256 positions. At the same time, we will strengthen our professional development and substantive analysis efforts. As soon as we have determined where those 256 cuts will be taken, we will advise the committee.

At this point, let me take a moment to present a picture of the Department of State population overseas.

The Secretary mentioned our continuing requirements. I would specifically note that the salaries and expenses appropriation alone had a net decrease of over 2,000 positions in the Department of State since 1967, amounting to 11 percent, despite many new and expanding requirements—particularly in consular activities. Currently, as the Secretary noted, Department employees constitute less than 20 percent of the average U.S. Embassy, and approximately 25 percent of the Department's resources abroad are now used to support the activities of other agencies. If we are to meet the complex challenges in the current foreign policy environment, the Department of State must have the necessary resources to pursue our worldwide objectives. We believe that the 1982 request in this regard is the minimum essential level needed to carry out our mandated functions.

FOREIGN SERVICE ACT OF 1980

Mr. Chairman, in addition to my earlier reference to the Foreign Service Act of 1980 in relation to professional development, let me describe several major steps that have been taken to implement the act: (1) pay comparability for the Foreign Service was implemented on October 5, 1980; (2) new Foreign Service designations and grade levels became effective February 15 of this year; (3) the Department is requesting supplemental appropriations, as I indicated, to cover the new allowances authorized by the act; and (4) we are moving ahead with the development of new Foreign Service regulatory provisions. All of these initiatives will help insure that the principal objectives of the act are fully met.

As to security, as the Secretary discussed, we intend to pursue vigorously the enhancement of security at our overseas posts to protect our staffs from mob violence and terrorism and to safeguard national security information. In 1980, the Congress enacted a supplemental appropriation of $6,100,000 and appropriated $35,800,000 for 1981. For 1982, $25 million will be required for 14 additional post programs to be initiated and to continue projects already underway.

The Department has already conducted comprehensive surveys at 20 of our most seriously threatened posts. We are about to embark on construction projects at five of the highest threat posts. And we have funded priority individual security requirements at some 79 posts since September 1980. By the end of 1985, we expect to complete the necessary improvements at approximately 125 posts. The Secretary and I are fully behind this security effort and will insure that improvements are implemented as rapidly as possible.

I can assure you we are following this on a continuing basis.

Mr. Chairman, turning to the major part of the fiscal year 1982 budget, the salaries and expenses appropriation, I would like to discuss certain portions of this request. The amount requested for salaries and expenses for fiscal year 1982 is $928,258,000, a net increase of $73,224,000 over the fiscal year 1981 adjusted appropriation. This represents a total increase of $87.4 million, partially offset by decreases of $14.1 million, which was $10.8 million for nonrecurring costs of our security enhancement program and $3 million for 38 specified and 256 unspecified personnel reductions.

Of the $73.2 million net increase, 99 percent stems from mandatory costs over which the Department has no control under existing law, while the remaining $534,000 will be used for research contracts for long-range policy assessments and to update the automated visa lookout system in the Visa Office.

Mr. Chairman, the appropriation request before you has been carefully balanced between constrained resources and the Administration's foreign policy objectives. Even within the present stringent budgetary environment we have made every effort to assure that sufficient resources are available for the United States to continue its role in the conduct of foreign relations.

This concludes my prepared statement, Mr. Chairman. I and my colleagues are prepared for your questions.

Senator WEICKER. Thank you very much, Mr. Kennedy.

Senator Rudman?

Senator RUDMAN. I don't have any questions for you this morning. I appreciate your appearance.

Mr. KENNEDY. Thank you, sir.

BUYING POWER MAINTENANCE FUND

Senator WEICKER. The Department has renewed its request for $20 million to establish a buying power maintenance fund. Under the proposal, a base amount plus any accumulated gains from currency fluctuation would remain available from year to year to offset unbudgeted inflation and currency losses. Currently the Department has requested a supplemental appropriation as needed. Why does this appear to be inadequate?

Mr. KENNEDY. It is inadequate in the sense that we are always behind the power curve, Senator. In order to actually offset exchange rate and unbudgeted inflationary losses, it ought to be done on a timely basis, if that is possible. Otherwise you have set things aside that should be done, should continue being done, until such time as we can come up and get an appropriation.

As to oversight, Senator, we would assure that the committee would be fully aware of the activities within that buying power maintenance appropriation. We would be prepared and indeed wish to report regularly on precisely what is going on and what changes are occurring in that appropriation and the extent to which the funds would be used.

Let me note also that none of the funds which would be generated or used in this way would be used for anything that had not already been approved and appropriated by this committee.

Senator WEICKER. Do you think maybe the justification for this request that you are giving me—and I think there is some validity to it—might also be the justification of the various international organizations in the sense of payments they receive from the United States rather than the system that is now being prepared by the United States?

Mr. KENNEDY. I wouldn't think it was quite the same justification, Mr. Chairman.

Senator WEICKER. We sort of put them behind the power curve now, don't we?

Mr. KENNEDY. Well, Mr. Chairman, I would be disingenuous if I didn't tell you I think this will cause, and I have said so on the record, some cash flow problems. We are aware of that. I think we would indeed be prepared to work with them to see how the effects can be mitigated. In no sense—I would like to emphasize what the Secretary said—in no sense does that proposition—that is, the moving forward of the payment dates—represent any change in policy with respect to those organizations. Rather, it is a bookkeeping exercise.

Senator WEICKER. It is a bookkeeping exercise I think for the benefit of some of our budget balancers around here. It is not a bookkeeping exercise. I had an opportunity to talk, for example, on the Organization of American States. I gather that is going to be no small problem.

Mr. KENNEDY. There isn't any question that it will cause certainly a temporary cash flow problem. There is no doubt about it. It does not change the ultimate budgetary requirement on the United States. It simply reduces the outlay at this point in time.

Senator WEICKER. That is exactly the point that I am making.

Mr. KENNEDY. It moves it forward.

Senator WEICKER. It creates an illusion right now, which I think is what some people are trying to achieve right now. Let me say the obligation is there, no question about it.

Mr. KENNEDY. That is not the purpose, even conceptually, of the buying power maintenance proposal. The purpose is simply to assure that we will have the funds in real fund terms of present dollars, which the Congress actually appropriates for us to conduct certain of our activities abroad, when in fact those activities have to take place.

Senator WEICKER. The Board for International Broadcasting has a similar fund but is required to return the gain back to the Treasury.

Why wouldn't this work for the State Department, rather than carrying the gain forward?

Mr. KENNEDY. Well, I think it would work. It just would have to be reappropriated. If it were in a sense a sustaining appropriation, it would not require constant reappropriation. We would have to justify it, but it would not require reappropriation.

NEW BENEFITS FOR FOREIGN SERVICE

Senator WEICKER. What specific new benefits provided under the Foreign Service Personnel Act of 1980 are budgeted in this request? If you want to supply that for the record, that is fine.

Mr. KENNEDY. Yes, I will. It is rather extensive.

[The information follows:]

ALLOWANCES AND OTHER BENEFITS

[In thousands of dollars]

1981 supplemental	Fiscal year— 1981	Fiscal year— 1982
Danger pay—from first day at posts under siege	264	422
Special incentive pay—to fill difficult posts	567	833
Child accompany on medivac—travel for child to accompany parent medivac'd from Foreign Service post	16	25
R. & R. in the United States—travel to United States from all 20 percent and 25 percent posts	450	792
Full post differential—payment to full differential up to $100 less than the salary of a Class I Ambassador	514	822
Protracted travellers, security officer—increases per diem rate for State security officers to that authorized for Secret Service	118	189
Family TDY in United States in connection with home leave and transfer—enables family to accompany employee during consultation or training between posts	1,286	2,069
Special differential, peak workload—FSO per diem in exceptional cases	300	480
Dental care travel—travel for dental care abroad	69	110
Child visitation—visitation travel for children living apart from employees	252	315
Additional R. & R. abroad—for employees at 25 percent differential posts	98	168
Training—tuition for overseas language training, improved grants to family members in the United States for training, and increased language incentives	182	489
Standby pay—for single communicator/secretary posts	120	197
Health care after divorce—continuation for treatment of former dependent	100	160
Supplemental total	4,336	7,071

SUPPLEMENTAL BENEFITS

Mr. KENNEDY. The total is, for 1981, $4.3 million; in 1982 it is $7.1 million. This ranges from danger pay for particularly hazardous posts to travel for children to accompany medically evacuated parents R. & R. in the United States, and assistance to family members accompanying an employee on temporary duty. Some of these are elements which it is hoped will in fact enhance the career program to give people a recognition that it is a difficult situation for them but to make that situation a little bit less difficult.

Senator WEICKER. It is my understanding that the fiscal year 1981 request was based on enactment of a supplemental in February. If the supplemental is effective in June, what is the actual amount you will need for the benefits in 1981?

Mr. KENNEDY. It will be substantially the same. It doesn't reduce it very much. If it is as of July 1, it would be about $2 million. So that would be about half of the 1981 figure.

OFFICE OF CONGRESSIONAL AFFAIRS

Senator WEICKER. The Department has an Office of Congressional Relations with a staff of 35 and a budget of $1.4 million. It also has a Bureau of Public Affairs with a staff of 122 and a $5.9 million budget.

I couldn't help but notice that in several bureaus, there appears to be an overlap. The Bureau of Political-Military Affairs identifies explicit congressional liaison and public affairs functions. Several other bureaus indicate congressional affairs and public affairs staffs; specifically, Inter-American Affairs, staff of 10; East Asia, public affairs staff of 4; Near East, public affairs staff of 6; Africa, public affairs staff of 7.

With entire offices and staff solely devoted to these congressional and public affairs responsibilities elsewhere in the Department, why is it necessary for the bureaus to duplicate these functions?

Mr. KENNEDY. Let me just say to the extent to which they are duplicated, that is one of the areas of considerable interest to me and my management staff and the Secretary. We are looking very hard at that.

Having said that, however, there are reasons for there being such staff in those particular bureaus. They develop expertise on the particular issues that arise in the context of those geographic regions and areas. Hopefully that is of greater benefit, therefore, to the Members on the Hill, as well as also to committees—giving them expertise which brings forth a much more accurate vision of precisely what is occurring and what is wanted either for the committee or the Hill.

Senator WEICKER. I guess what you are saying to me is in the course of the reductions you have to make, tnat you are going to be reviewing this whole area——

Mr. KENNEDY. We are looking at everything, that is right.

Senator WEICKER [continuing]. As a possible area of reduction, to make up for areas on which you have placed greater priority. Is that correct?

Mr. KENNEDY. That is correct.

Senator WEICKER. Incidentally, while I remember it, this is a good time to bring it up, when the administration took over, one of the first things that was relayed to my office, and then subsequently canceled, even before I could get on the phone and complain, was somebody told me that the Stamford Passport Office was going to be closed. Then, as I said, even before I could get to anybody in the State Department, I was called and they said no, that was a mistake.

Mr. KENNEDY. That was I who called you.

Senator WEICKER. Right now where does that situation stand?

Mr. KENNEDY. The Stamford Office is open.

The Secretary, I might add, asked me how could I have made such a stupid mistake. [Laughter.] I assured him it would not be repeated on a regular basis.

Senator WEICKER. Well, I tell you, the only thing that is wrong there—I feel everything has to be reviewed, and that includes any facilities in the State of Connecticut. I have no problem with that. But I don't think any of you realize—you have been in the State Department quite a while. I don't know how much you realize. I came to the Congress in 1968. One of the first things I did was to contact Frances Knight. That battle of getting an office, well, I think it took close to 6 years or so, somewhere around there, before it was finally established. I just couldn't believe it.

Mr. KANE. Eight years.

Senator WEICKER. It was 8 years. I couldn't believe it; 8 years, and it was going down in the course of one message that took 5 seconds from somebody.

Mr. KENNEDY. Let me just point out, Senator, that it didn't happen on our watch. That was in the Carter budget. We just didn't catch it and remove it.

ASIA FOUNDATION

Senator WEICKER. The Department is requesting no funds for the Asia Foundation in fiscal 1982. Have you determined that it is inappropriate to fund this activity?

Mr. KENNEDY. Senator, it is a worthwhile activity. It is a question of priorities. We are in the period of austerity, as I mentioned.

I took a look at this whole thing. It is our view that, first of all, it ought not to be funded in the State Department's budget. It has two broad categories of activities. One is an informational and cultural area. The other is essentially a developmental category.

We think that if it is to be funded by U.S. Government resources, they ought to come from the agencies which are concerned with those activities—ICA in the cultural area in particular and AID in the developmental area—and certainly not from the Department's budget, which is an operating budget. If it has to come from the Department's budget, we would hope that the Congress would see fit to increase our request by the amount to cover it rather than cause us to absorb it within our fiscal year 1982 budget request which will force us to cut into other items we believe to be more essential.

EXTERNAL RESEARCH

Senator WEICKER. The last question: $350,000 for external research contracts tailored to meet intelligence needs is requested. This is a new item in the March budget. But the January budget requested 28 additional intelligence analysts. Is this contract request a substitute for the earlier positions request or will you also reassign positions from other functions to INR?

Mr. KENNEDY. No, sir. As to the $350,000 proposal, it is for some long-range kinds of assessments. These assessments call on the expertise of experts, real experts in the field, in academic areas and some of the think tanks. These are people who have spent their lives studying particular questions, who are broadly connected throughout the academic and intelligence communities, and who can bring to bear expertise on particular questions.

For example, there is the question of the relationship of the Union of Socialist Soviet Republics to the developments going on in Islam. Second, we have terrorism and technology—what technological developments may have in store for us as to terrorism expansion. Third, there is Indonesia, a long-term look into the next decade as to its politics and foreign policy; what its internal situation may look like, and how that will affect our interests. These are the kinds of programs that are involved.

Senator WEICKER. Very frankly, I don't understand with all the agencies of government, why one can't meet this need with its existing resources.

Mr. KENNEDY. These are the kinds of studies that would require two or three people to spend full time over a very long period. Our analysts are working, generally speaking, in much shorter timeframes and on what would be closer and more direct short-term policy-related items.

Senator WEICKER. What is the total amount of contract and consultant funds budgeted for the Department?

Mr. FELDMAN. Mr. Chairman, if I may, I would like to provide that for the record.

Senator WEICKER. Yes, you may.

[The information follows:]

EXTERNAL RESEARCH CONTRACTS AND CONSULTANT SERVICES

The Department's fiscal year 1982 budget contains $1,250,000 for external research contracts and $1,448,000 for consultant type contracts.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. Our other questions will be submitted for response in the record, unless Senator Rudman has any additional questions.

Senator RUDMAN. No.

Senator WEICKER. I thank you all very much.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WEICKER

Question: The previous administration created the post of Ambassador-at-large for Liaison with State and Local Governments. There are five positions and $168,000 associated with this office. Can you tell me if you intend to keep this post, and if so, why does the Department need a foreign policy envoy to state and local governments?

Answer: The Department does not intend to retain the specific position of Ambassador-at-large for Liaison with State and local Governments. The function will be retained, however, to be carried out by a Special Assistant to the Secretary. We are considering the level of staff assistance which may be required and the possibility of greater reliance on the office of Public Affairs for that assistance.

The Secretary frequently meets with key state and local officials and often speaks before governmental, public and private groups. The existence of a liaison office allows a close continued relationship which is important between a major cabinet position and local and state representatives.

Question: Also, I see that there is apparently the new post of Ambassador-at-Large for Cultural Affairs. The incumbent in this position acts as an adviser for cultural programming functions of the International Communication Agency and, among other things, provides guidance to the Art-in-Embassies program. Why is it necessary for the Department to have an officer and staff when we have an entire agency - ICA - to perform these responsibilities?

Answer: Cultural affairs and cultural relations are an integral and important part of our relations with foreign countries. Although the International Communication Agency is now the lead organization for the promotion of cultural relations between the United States and foreign countries, the Department believes that it should be better prepared to consider the importance of cultural affairs in the overall development of foreign policy. The Ambassador-at-Large for Cultural Affairs will serve as an adviser to the Secretary on cultural matters. He will be providing a more personal view regarding relations with foreign countries that might otherwise be relegated to the impersonal interagency relationship. The Department believes that having an Ambassador-at-Large for Cultural Affairs will evidence the continued interest of the Department and the Secretary in cultural relations and will serve as a necessary liaison between the Department and ICA with regard to these matters.

Question: Every year, the issue of controlling federal employee wage increases comes up in Congress and the Executive branch. However, I notice in your budget substantial increases projected for foreign national wage increases: 19.3 percent in Africa; 10.7 percent in the Near East; 13.3 percent in East Asia; 29.9 percent in Latin America; and 13.2 percent in Europe. What agreements do we have with foreign governments concerning foreign national wage increases? Is there any way of controlling these increases?

Answer: We do not have formal agreements with foreign governments concerning foreign service national wage increases. However, we are required by Section 408 of the Foreign Service Act to establish compensation plans for foreign national employees of the service based upon prevailing wage rates and compensation practices in the locality. Foreign Service posts review local compensation plans at least once a year in order to insure comparability with private employers and other employers such as other diplomatic establishments. To be competitive, each plan should reflect inflationary trends as well as local government decrees that relate to wage levels. The percentage increases projected in our budget reflect the best estimates that personnel officers and survey teams have of the increases needed to keep our posts even with prevailing rates in 1982.

The only way to control those increases would be to have compensation plans that pay less than the prevailing rate. This would violate the provisions of the Foreign Service Act, and we would run the risks of losing our best foreign national employees to other employers who pay prevailing or higher rates.

Question: The Budget request assumes enactment of legislation to waive the non-immigrant visa requirements for short-term visitors from selected countries. What is the total amount of assumed savings?

Answer: The Department's FY 1982 budget request was submitted on the assumption that legislation to waive the non-immigrant visa requirement would be approved; therefore, the funds and positions associated with the waiver were not included in the submission. The FY 1982 savings already excluded from the budget as a result of the anticipated waiver are 121 positions (23 Americans and 98 Foreign Service Nationals) and $913,000. Since the FY 1982 figure is based on half year projections and is offset by severence and other termination costs, the real effect of the waiver in terms of dollar savings will not be felt until FY 1983, the first full year, when the savings will be $3,778,000.

Question: Has legislation been officially transmitted to Congress?

Answer: Included in the Department's FY 1982-83 Authorization request was a provision to waive the non-immigrant visa requirement for those countries with low visa refusal rates.

During the course of the House Foreign Affairs Committee markup of our authorization bill, the Committee members, although in full support of the waiver provision, thought it would be more germane to delete this item from the bill and refer it to the Judiciary Committee for their consideration. On the Seante side, the Foreign Relations Committee while approving the waiver, has referred the measure to the Senate Judiciary Committee.

Question: What is the current status of your security enhancement program?

Answer: As of May 1981, the Departments has completed security surveys at 27 of our most seriously threatened Foreign Service posts and has begun surveys at three additional posts. Also, plans have been completed for security enhancement construction projects at five of our highest threat posts.

Further accomplishments to date include:

-- Funding the security requirements at some 79 high threat posts for such items as public access control projects, stronger local guard forces, equipment for local radio communications networks, and residential security improvements.

-- Ordering of equipment for communications, security and document storage, and such items as voice radios, alarms, closed circuit televisions, tear gas, protective apparel, hardened window material, generators, vault doors, armored vehicles, escape equipment, locks and high speed circuits.

Although implementation of all aspects of our program will require five years and encompass 125 high threat posts, the $35.8 million included in the FY 1981 budget for Security Enhancement should enable us to accomplish our immediate objectives in upgrading physical and technical security at our most critically threatened posts.

Question: The additional funds requested this year for travel assume a 9.9 percent increase in air fares. This is consistent with what has been done by other Executive Branch agencies. However, I have noted that the Judiciary -- which is not subject to OMB guidance -- has budgeted for a 15 percent increase in domestic air fares. The bulk of your travel is, of course, international.

How realistic is this 9.9 percent projection?

Answer: The 9.9 percent estimate for FY 1982 was based on what the Executive Branch considered to be the best economic projection available at the time.

Question: Is this based on guidance from OMB?

Answer: Yes.

Question: Do you know what the actual increase in air fares in 1981 has been?

Answer: Air fares increased 7.6 percent through April. It is estimated that price boosts through the summer, additional to the 7.6% actual increase for April, could bring the annual percentage increase as high as 15.9 percent for Fiscal Year 1981.

CONCLUSION OF HEARINGS

Senator WEICKER. This will conclude the hearings on the State, Justice, Commerce appropriation bill. The subcommittee will recess subject to the call of the Chair.

[Whereupon, at 11:35 a.m., Friday, May 1, the hearings were concluded and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

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